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In The

Supreme Court of the United States of America

October Term, 1934

No. 717

LOUISVILLE JOINT STOCK LAND BANK OF LOUISVILLE, KENTUCKY, PETITIONER

vs.

WILLIAM W. RADFORD, SENIOR, RESPONDENT

On writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

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STATEMENT AND BRIEF FOR THE RESPONDENT

PRELIMINARY STATEMENT

Alexander Hamilton, shortly after the conception of the nation, stated that *agriculture,* commerce, and revenue, were the chief concerns of government. Something over a century later, Woodrow Wilson also stressed the fact that *agriculture* was one of the vitals of the Nation.

"I need not stop to tell you how fundamental to the Nation is the production of its food." (First Annual Address.) And again, "* * * while they (the farmers) have sustained our life, they did not in the same degree with some others share in the benefits of that life." (Remarks, July 17, 1916, signing Farm Loan Bill.)

A fact all men know.

Data from government publications subsequently submitted, show that since 1921, the farmer has in each year, received only one-half or less of his normal income. That in each year it has been at least $5,000,000,000.00 smaller than it should have been. And that it was not until, for two successive years, his income became about 67 percent less than normal, that he became delinquent, in meeting the interest requirements of his

mortgage, and eviction from farms, as a result, a national menace.

We will show by their own statistics, that in the grain belt of the Middle West alone, a small class of mortgage holders have already acquired not less than 10,000,000 acres of the best farm land in the country, formerly owned by prosperous citizens, belonging to a class that has always been the stable, conservative, and dependable bulwark of the nation.

To arrest the alarming threat to national security, that will be brought about by the concentration of ownership of the great farm areas of the country in the hands of a few, contrary to the traditional policy of the United States, Congress has passed an amendment to the National Bankruptcy Act, known as the Frazier-Lemke Act.

THE LAW OF THE CASE

Inasmuch as this case presents only questions of law for the decision of the Court, as distinguished from questions of fact, we shall state them before referring to the facts:

(a) Does the constitutional power of Congress to establish uniform laws upon the subject of bankruptcies (Const., Art. 1, Sec. 8, Clause 4), include the power to enact a law primarily designed for the relief and protection of an insolvent farmer, containing within its provisions, a moratorium, upon reasonable terms, and giving the farmer, by way of exemption, the exclusive privilege, over the objections of his creditors, to repurchase his property at a price to be fixed by appraisement approved by the Court, as distinguished from a law having for its primary purpose, a prompt sale, speedy distribution of the assets of the farmer among his creditors, and the eviction of the farm owner?

(b) Is the progress of jurisprudence in the United States to be turned backward to the year 1789, and the power of Congress to establish uniform laws on the subject of bankruptcies be limited in 1934, to the type of such laws in force in England at the time of the Revolution, thus making it impossible for a debtor on his own initiative to be relieved of the burden of an unpayable debt and thereby converting the farmers of America into tenant peasants?

(c) Is the Act of March 3, 1933, Section 75, as amended by the Act of June 28, 1934, which amendatory Act is known as the Frazier-Lemke Act, so unjust and unreasonable in its terms and provisions as to impel the conclusion, that it is an arbitrary attempt to exercise legislative power, and hence does its operative force and effect deprive a lienholder of his liberty or his property without due process of law, in violation of the Fifth Amendment to the Federal Constitution?

The District Court (Dawson, J.), and the Circuit Court of Appeals for the Sixth Circuit, on appeal, upheld the law as against the contentions of the lienholder. (Rec., pp. 52, 101.)

And thereupon this Court, moved by the novelty and importance of the question involved, issued herein a writ of certiorari.

The contention of the lienholder in this case, if sustained by this Court would prevent a class of citizens, comprising one-third of our population, from obtaining such a privilege of financial reorganization as will afford them an opportunity, albeit a distant one, to be retained as owner-farmers, in keeping with the traditional policy of the Republic.

The contention of the lienholder in this case and which is typical of that made in the various courts

by other large mortgagees, reduced to its last analysis, is that Congress, under its constitutional bankruptcy power, cannot extend to a class of citizens, who formed the Republic, defended it, and for a century and a half have been regarded as its backbone, the right at this time, to so reorganize their financial affairs that they may remain as the dependable, stable and conservative bulwark of the nation. That instead, in order to satisfy the greed of a few, they must be reduced to the status of hired hands, to whom at the present time is paid the meagre wage of $20.00 a month. That these lienholders, who in many cases refused to accept a substantial payment on their mortgages from the Federal government under the Emergency Farm Mortgage Act of 1933, and who did not elect to take the relatively small shrinkage thereby implied, can force the farmer to take a shrinkage of all his pecuniary investment in his farm, plus many years of hard effort. That such lienholders hold an exclusive franchise to seize such land as a hedge against possible inflation, or exclusively profit by a possible or probable future prosperity that may restore farm lands to the level they were when the liens were created. That thereby they will have the exclusive right to realize exorbitant profits on their present investment. But that the farmer, although his investment in the farm is several times that of the lienholder, cannot under the Constitution, which his hand helped write, be granted that privilege. But must be content to labor at a meager pittance for those who formerly considered it a privilege to make him a loan. That it must be noted that these farmers whom it is now proposed to evict, because under the Constitution as framed, they are claimed to have no right as do the lienholders, are practically all past the

prime of life. That they do not have any chance whatsoever of accumulating a future competence, either for their own security or for the benefit of their descendants, except by regaining the ownership of their own "vine and fig-tree" (Micah 4:4).

THE FACTS

The ultimate facts of this case are within a small compass: Radford, a farmer, executed two mortgages to Louisville Joint Stock Land Bank, one executed in 1922 and one executed in 1924 (Rec., pp. 18, 27), and aggregating $9,000. Having in mind that under the terms and provisions of the Federal Farm Loan Act (Title 12, U. S. C. A., Banks and Banking, Section 771, Fifth Subdivision), a land bank might not make a loan upon land for more than fifty per cent of its value, it would seem that the land of Radford was worth $18,000 in 1924. On December 4, 1934, an amended report of appraisement was filed and approved by the Court, fixing the market value of the land, also the reasonable and fair value of the land, at $4,445 (Rec., p. 87).

Radford failed to make the payments required of him by the mortgage. A suit was brought to foreclose the mortgages, resulting in a judgment accordingly (Rec., pp. 35, 41).

On February 26, 1934, Radford filed a petition for debtor's relief under Section 75 of National Bankruptcy Law (Rec., pp. 8, 9). An order of approval was accordingly entered (Rec., p. 10).

On November 10, 1934, Radford filed an amended petition in which he asked to be adjudged a bankrupt, as proveded by Subdivision (s), Section 75, Act June 28, 1934 (Rec., pp. 11-14).

Louisville Joint Stock Land Bank, a lienholder cred-

itor of Radford, filed its answer to the second amended and substituted petition of Radford (Rec., pp. 15-50).

The debtor by way of replication admitted the allegations of the answer (Rec., p. 50).

So that the only question arising on this appeal is one of law, the constitutionality of the Acts March 3, 1933, and of June 28, 1934, (the Frazier-Lemke Act), of which is predicated the right of the farmer to the relief granted him in the District Court in this case:

(a) The right to be protected against legal proceedings for five years with regard to his farm (Rec., p. 80), dependent on the payment of an annual rental fixed by the referee for the first year at $325 (Rec., p. 82).

(b) The right to clear the farm in question from the lien of the mortgage thereon by paying into court within five years, the sum of $4,445, found by the appraisers in an amended report (Rec., p. 87), approved by Judge Dawson (Rec., p. 86), to be the fair and reasonable value, likewise the market value, of the property of the debtor on which Louisville Joint Stock Land Bank holds a mortgage.

(This right of the debtor is subject to the right of the lienholder at any time within five years to ask a reappraisement of the property, in which event the debtor will be required to pay the higher of the two appraisements.)

Radford was adjudicated a bankrupt and the proceeding was referred to Nat C. Cureton, as Referee in Bankruptcy (Rec., p. 51).

Radford then petitioned for the relief to which he claimed to be entitled under the Frazier-Lemke Act (Rec., p. 67).

Appraisers were appointed (Rec., p. 68), who filed a report as such (Rec., p. 69).

At a hearing before the referee, the lienholder made an offer to purchase the property, which was declined (Rec., p. 71). The details of this will be adverted to in the brief.

The record contains a stipulation to the effect that at the hearing before the referee, the lienholder failed to avail itself of a proffered opportunity to introduce independent evidence of the value of the security held by it for the loans of Radford. (Rec., p. 99.)

The referee fixed "the fair and reasonable value of the mortgaged property, but not necessarily its market value," at $4,445.00, the amount of the appraisement (Rec., p. 72). The exemptions of the bankrupt were set aside (Rec., p. 73). An order was entered staying all proceedings against the debtor for a period of five years (Rec., p. 80) and the rental value of the land was fixed (Rec., p. 82).

The proceedings before the referee were reviewed by Judge Dawson on a petition for a review filed by Louisville Joint Stock Land Bank (Rec., pp. 82-84). Judge Dawson permitted the appraisers to file an amended report, approved by the Court (Rec., pp. 85-88), fixing separately "the fair and reasonable value of the property of the debtor on which Louisville Joint Stock Land Bank has a mortgage"; also the "market value of said land" (Rec., p. 87). This value in the case at bar is identical in both instances. Judge Dawson affirmed the order of the referee (Rec., p. 86).

The order of Judge Dawson has been affirmed by the Circuit Court of Appeals (Rec., pp. 101-112).

ANALYSIS OF DEBTOR'S RELIEF DECISIONS.

By the Act of March 3, 1933, provision was made respectively for the relief of individual debtors generally (Section 74); for farmers in particular (Section 75); and for certain types of corporations (Section 77, amended, June 7, 1934, and now known as Section 77B). Section 75 was amended June 28, 1934, by the Frazier Lemke Act.

Section 75, as amended June 28, 1934, has been held constitutional.

Louisville Joint Stock Land Bank v. *Radford*, (6 C. C. A.) 74 Fed. (2), 413, Rec., pp. 101 *et seq.*

In re Radford, (D. C. W. D. Ky.) 8 Fed. Supp. 480, Rec., pp. 52 *et seq.*

In re Cope, (D. C. Colo.) 8 Fed. Supp. 778.

In re Cyr, (D. C. N. D. Ind.) Commerce Clearing House, Bankruptcy Service, p. 1331.

In re Harry G. Jones, (Western Dist. of Mo., March 13, 1935, Otis, J.) *

*Judge Otis, in the opinion and order, held that congress had the power to legislate in order to accomplish results intended.

"What this Act does to the secured creditor of a bankrupt best may be made clear by a supposititious case.

"A, the owner of an 80-acre farm, on January 1, 1930, borrowed from B $5,000, giving to B his note for that amount, payable in five years, with interest at 6 per cent, and giving to B also, to secure the payment of the note, a deed of trust to his farm. The note was due January 1, 1935. B would have had the right, if the note was not paid when due, to sell the farm and to apply the proceeds to the payment of the note.

"But A has petitioned to be adjudged a bankrupt in accordance with the provisions of the Frazier-Lemke amendment. His farm has been appraised as of the fair value of $2,000. B has refused to consent to the sale by the trustee of the farm to A upon the terms authorized by the amendment and has objected in writing thereto. B has been deprived, however, of the right to cause A's farm to be sold and to apply the proceeds of the sale to the payment of the note.

The court is required to stay for five years all proceedings by B to enforce his deed of trust in accordance with its provisions. If, during that period, A pays semi-annually a reasonable rental on the farm, say in the amount of $60 (being 6 per cent on a valuation of $2,000) and at the end of that period pays into court $2,000, the lien is ended and A is discharged from further obligation as to both the prin-

cipal and the accumulated interest on the $5,000 note.

"Such is the suppositious case.

Basis of Power

"Did congress have the power to legislate so as to accomplish these results?

"The only power claimed for congress in this connection is in clause 4 of section 8 of article 1:

> "The congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States.

"The Constitution does not define what is meant by the word 'bankruptcies.' The supreme court never has formulated an all-inclusive definition of the word. But a consideration of opinions of that and other courts dealing with the subject justifies us in saying that the purpose of bankruptcy is to secure finally to the creditors of a debtor distribution of the value of at least a part of his assets and to the bankrupt a discharge from his debts to the ends that the creditors may be paid as much as may be and that, in an economic sense, the bankrupt may have a new start in life. Whatever legislation is within that broad purpose is sufficiently related to the subject of bankruptcies to be within the power conferred on congress by the Constitution.

"Bankruptcy certainly does not involve a surrender of all a bankrupt's assets. What the law of the state in which he lives exempts from execution is saved to him. The theory is that it is better to leave to him the means with which to begin his rehabilitation and to save society from the burden of immediately supporting him and his family than to give to his creditors the last penny in value of his property.

"None questions the right of congress to allow a bankrupt to retain what the state law exempts. None could question the power of congress itself directly to prescribe what exemptions, within reasonable limits, the bankrupt should have. Whatever amount reasonably might be said to be necessary to enable the bankrupt to begin his rehabilitation and to save him from becoming a burden to society, that amount congress has the right to save him, notwithstanding bankruptcy.

"If, for the attainment of such a purpose, congress may save absolutely to the bankrupt a substantial part of his assets, why may it not, for the attainment of the same purpose, save to him the mere possession of all of his assets for a while, giving to his creditors for that period a reasonable rental for such assets and their fair value at the end of the period?

"A negative answer to this question can be justified only upon the theory that the word 'bankruptcies' as it is used in the Constitution necessarily is limited in meaning to its exemplification a century and a half ago. But none of the concepts of the Constitution is so limited. This one is not. While none of the concepts of the Constitution is so elastic that it may be distorted to defeat an end aimed at in its formulation, each is sufficiently elastic to enable its original purpose to be accomplished by varying means and methods."

Judge Otis continued: "In the light of this principle and of the purpose of bankruptcy it cannot be said that the Frazier-Lemke amendment is invalid simply because it postpones realization by the creditors of the fair value of the bankrupt's non-exempt assets, giving them meanwhile a reasonable rental, and allowing to the bankrupt temporary possession as a means of aiding him toward rehabilitation and of saving him from becoming a burden to society.

"Of course this amendment impairs the obligations of contracts. Any bankruptcy act does that. Of course it destroys private property. Any bankruptcy

Judge Robert L. Williams, (D. C. E. D. Oklahoma), has officially stated orally his opinion that the Act was constitutional.

Also Judge Martineau, Commerce Clearing House Bankruptcy Service, p. 1224, (concurred in by Judge Ragon, according to the daily press); also as to Judge Raymond (D. C. W. D. Mich.), Ib., p. 1239.

Judge Chesnut (D. C. Md.) has upheld the theory of the Act as valid, but decided the details thereof violated the Fifth Amendment.

In re Bradford, 7 Fed. Supp. 665.
Note analysis of Judge Chesnut's opinion post, in the appendix.

Judge Dawson did not cite Judge Chesnut's opinion; neither did Sixth Circuit Court of Appeals in the opinion in the proceedings at bar; nor did counsel for the lienholder in the proceeding at bar cite Judge Chesnut's opinion in the brief filed by them in the Circuit Court of Appeals.

Judge Symes (*In re Cope, supra*), did not cite Judge Chesnut's opinion, nor did Judge Otis.

Judge Way (D. C. E. D. Va.) orally announced his concurrence in the opinion of Judge Chesnut.

Judge Dickinson (D. C. E. D. Pa.) has declined to hold the Act unconstitutional, holding the question to

act does that. In these respects it presents nothing new."

In concluding, Judge Otis said:

"It is new in that it impairs security given for a debt. No bankruptcy act has done that in the past. Instead of impairing only one contract, it impairs two contracts—the primary contract to pay the debt and the secondary contract to surrender on a stipulated date specific property in or toward payment of the debt. But as against bankruptcy, one kind of contract is no more sacred than another. The power of congress to provide for the discharge of debts through bankruptcy is not limited to any single class of debts. It includes secured debts as well as those which are not secured.

"The exceptions to the order of the referee in bankruptcy having been duly considered by the court, and the court being fully advised in the premises, are by the court overruled. The order of the referee is confirmed and approved. It is so ordered."

be one for this Court to decide in the first instance. Likewise see:

In re Moore, (Commerce Clearing House, Bankruptcy Service, p. 1149.)

In *Paine* v. *Capital Freehold Loan & Invst. Co.*, 8 Fed. Supp. 500, Judge Atwell (D. C. N. D. Tex.) upheld the theory of the law, but reserved judgment as to the details thereof.

Judge Lindley (D. C. E. D. Ill.) has likewise upheld the theory of the law.

In re Duffy, 9 Fed. Supp. 166.

In a number of cases the Frazier-Lemke Act (Section 75), has been assumed to be constitutional.

Zapalac v. *White*, 9 Fed. Supp. 419.
In re Lowman, 8 Fed. Supp. 886.
In re Klein, 9 Fed. Supp. 57.
In re Stacy, 9 Fed. Supp. 127.
In re McMurray, 8 Fed. Supp. 449.
In re Cragg, 9 Fed. Supp. 41.
In re Coller, 8 Fed. Supp. 447.
In re Crocker, 9 Fed. Supp. 126.
In re Dickinson, 9 Fed. Supp. 227.
In re Wilkin, 8 Fed. Supp. 222.
In re Arend, 8 Fed. Supp. 211.
In re Peterson, 8 Fed. Supp. 86.
In re Samuelson, 8 Fed. Supp. 473.
In re Smith, 9 Fed. Supp. 277.
In re Chab, 8 Fed. Supp. 195.
In re Kolina, 9 Fed. Supp. 170.
In re Rank, 9 Fed. Supp. 171.
In re Conciliation Commissioner, 5 Fed. Supp. 131.
In re Palma Brothers, 8 Fed. Supp. 920.

(Following citations are from Commerce Clearing House, Bankruptcy Service. References are to pages of the service)

In re Sinclear, 1157.
In re Dickinson, 1247, 1248.
In re Chaboya, 1248.
In re Rice, 1307.
In re Clark, 1308, 1309.
In re Suck, 1309.
In re Hilliker, 1329, 1330.
In re Cooke, 1330.
In re Henderson, 1330.
In re Houser, 1332.
In re Thistler, 1333.
In re Franklin, 1144.
In re Pindhomme, 1213.
In re Peters, 1214.
In re Storey, 1215.

Section 74 has been declared constitutional.

In re Landquist, (7 C. C. A.) 70 Fed. (2) 929.
In re Victor, (7 C. C. A.) 70 Fed. (2d) 937.
In re Sterba (7 C. C. A.), 74 Fed. (2d) 413.
In re Jacobs, 7 Fed. Supp. 749.
Collins v. *Welch*, (9 C. C. A.) Commerce Clearing House, Bankruptcy Service, p. 1350.
In re Burgh, 7 Fed. Supp. 184.

Section 74 assumed to be valid.

In re Weissbaum, 2 Fed. Supp. 967.
In re Collier, 4 Fed. Supp. 700.
In re Looker, 6 Fed. Supp. 571.
In re Doelger, 6 Fed. Supp. 776.
Molina v. Murphy, 71 Fed. (2d) 605.
Santos v. Noreda, 71 Fed. (2d) 608.
In re Hillwert, 71 Fed. (2d) 411.
In re Faour, 72 Fed. (2d) 719.

(The following references are to pages in Commerce Clearing House, Bankruptcy Service.)

In re Cosgrave, 1257
In re Lang, 1268
Brunn v. Wickscher, 1269
In re Kusel, 1289.

Section 77B has been assumed to be valid:

(References are to pages Commerce Clearing House, Bankruptcy Service.)

In re South Construction Company, 1117.
In re Midland United Company, 1117.
In re National Department Stores Co., 1118.
In re Lebolt, 1127, 1138.
In re Flamingo Hotel Co. 873.
In re Austin Hotel Co., 875
In re Paramount Publix Corporation, 875.
In re St. Louis Public Service Company, 876.
In re Texas Gas Utilities Co., 877.
In re White Truck & Transfer Co., 887.
In re St. Louis & San Francisco Ry. Co., 888.
In re 1030 *North Dearborn Bldg. Corporation*, 1105.
In re Austin Hotel Co., 1105.
In re Surf Bldg. Corp., 1172.
In re Allied Owners Corp., 1206.
In re DeWitt Clinton Co., 1207
In re Grinnell-Texas Co., 1224.
In re Fonda, etc., R. R. Co., 1270.
In re Bush Terminal Co., 1288.
In re Milady's Footwear Corporation, 1304.
In re Wayne Pump Co., 1321.
In re Poland Union, 1350.
In re Associated Gas & Electric Co., 1155.
In re Prudence-Bonds Corporation, 1156, 1301, 1302.
In re Mo.-Kans. Pipe Line Co., 1162.
In re Central Funding Corporation, 1297.

See also:

In re Studebaker Corporation, 9 Fed. Supp. 426.
In re National Lock Co., 9 Fed. Supp. 432.
In re South Coast Co., 8 Fed. Supp. 43.
In re Rialto Properties Co., 8 Fed. Supp. 57.
In re Syndicate Oil Corporation, 8 Fed. Supp. 213.
In re Sierra Salt Corporation, 8 Fed. Supp. 922.
In re Central Public Utility Corporation, 8 Fed. Supp. 17.

In re Middle West Utilities Company, 8 Fed. Supp. 38.
In re New York Title & Mortgage Co., 9 Fed. Supp. 319.
In re Union Guarantee & Mortgage Co., 8 Fed. Supp 281.
In re Consolidated Gas Utilities Co., 8 Fed. Supp. 385.
In re Electric Public Service Corporation, 9 Fed. Supp, 127.
In re Coney Island Hotel Corporation, 9 Fed. Supp. 329.
Bryan v. Welsh, (10 C. C. A.) 72 Fed. (2d) 618.

Section 77B has been declared constitutional.

In re Chicago, Rock Island & Pacific Ry. Co., 72 Fed. (2) 443.
Consult, 19 Va. Law Review, 340, 348, 350.
Bibliography, Commerce Clearing House Bankruptcy Service, 1093-1095. Also, pp. 111-127, 151-158, 611, 613, 675, 712. Opinion of Solicitor General Thacher, 864-870.

The attention of the Court is called to "Corporate Reorganizations", the publication of which started August, 1934.

The August number begins with the biography of Hon. John M. Woolsey (D. C. N. Y.) who has upheld the constitutionality of the Corporate Reorganization Act (June 7, 1934), which the Court will recall is predicated of voluntary action on the part of the debtor. (See p. 30 of the August, 1934, number, Corporate Reorganizations.)

See, also, ruling Judge Coxe (D. C. N. Y.), as to the constitutionality of Corporate Reorganizations, August, 1934, p. 37.

Edwin S. S. Sunderland of the New York bar contributes an interesting article on the subject, The Historical Background of the Corporate Reorganization Act, a perusal of which will aid the Court to see the

fallacy of the argument of the lienholder in the case at bar (pp. 4 *et seq.*).

See, also, the September number of the same magazine.

See, also, in the August number of the magazine quoted, an article by W. Randolph Montgomery, counsel to National Association of Credit Men, quoting an article by Reuben G. Hunt of the Los Angeles bar, who (as Mr. Montgomery says) is "a recognized authority on bankruptcy" upholding the constitutionality of the act.

At p. 42 of the magazine cited is a list of railroads and electric lines which are seeking to reorganize under Corporate Reorganization Act, all of which proceedings are to be held void if the contention of the lienholder in this case be sustained.

The September number of the magazine cited (p. 52), refers to the action of Judge Davis (D. C. Mo.) who impliedly held Corporate Reorganization Act valid by dismissing a petition under the act on its merits.

See, also, action of Judge Lindley (D. C. Ill.) in assuming jurisdiction of a corporate reorganization.

Judge Bryant (D. C. N. Y.) also disposed of a case (p. 59), in which a multitude of counsel were engaged and in which the question of constitutionality was not raised.

THE FRAZIER-LEMKE ACT

The pertinent provisions of the Frazier-Lemke Act may be thus analyzed:

The Act is subdivision (s) of Section 75, National Bankruptcy Act, enacted March 3, 1933. The section, as originally enacted, provides, subdivision (a), for the appointment of Referees (in bankruptcy), to be known

as Conciliation Commissioners upon the petition of a certain number of farmers. In the case at bar, such appointment was duly made.

Subdivision (b) of the Section is regulatory generally of Conciliation Commissioners. No question of procedure arises under subdivision (b) of the Act in the proceeding under review herein.

Subdivision (c) of the Act provides for the filing of a petition by a farmer stating that the farmer is "unable to meet his debts as they mature, and that it is desirable to effect a composition or an extension of time (in which) to pay his debts." Such a petition was filed by the farmer (Radford) in the case at bar.

Subdivision (d) of the Section requires the farmer "within such time and in such forms as the rules provides" to "file an inventory of his estate." Such an inventory was filed in the proceedings under review herein.

Subdivision (e) of the Section provides for a first meeting of the creditors of the farmer. The procedure at the first meeting is prescribed. In the proceedings under review herein such a meeting was held and no question of procedure with respect thereto arises in this proceeding.

Subdivision (f) to (m) both inclusive of the Section are regulatory of the procedure to be had in case an extension or composition proposed is submitted to the court for action. No such proposal was acted on in this proceeding under review herein because the farmer was unable to obtain the necessary consent of his creditors to such a proposal.

Subdivision (n) provides that the filing of a petition shall subject the farmer and his property wherever located to the exclusive jurisdiction of the court. Its juris-

diction, and that of its officers, the duties of the farmer, and the rights and liabilities of creditors, and third persons, with respect to the property of the farmer, and the jurisdiction of the appellate courts, are the same as if a voluntary petition for adjudication had been filed, and a decree of adjudication entered on the day the petition was filed.

Subdivision (o) provides that except with the consent of the judge, certain proceedings "shall not be maintained, in any court or otherwise, against the farmer or his property * * *." Six classes of proceedings are then enumerated, including proceedings for any debt, foreclosure, or certain specified actions for recovery of possession of land, or proceedings to acquire title to the land by virtue of any tax sale, or proceedings such as attachment, or proceedings to sell land in satisfaction of any judgment or lien, or seizure, distress, sale, or other proceeding under an execution or under any lease, lien, chattel mortgage, or the like.

Subdivisions (p) and (q) of the Section are immaterial in the review being had herein. Subdivision (r) of the Section is definitive of a farmer. Radford is a farmer as defined in this subdivision.

Subdivision (s) of the Section, the Frazier-Lemke Act, needs to be read in its entirety to be understood. The successive procedural steps thereby required to be taken may be thus outlined:

"Any farmer failing to obtain the acceptance of a majority in number and amount of all creditors whose claims are affected by a composition or extension proposal" may ask to be adjudged a bankrupt. Radford was adjudged a bankrupt in accordance with this provision.

The farmer thus adjudged a bankrupt may, at the

time of the first hearing, petition the court that all of his property, whether pledged, encumbered, or unencumbered, by liens or otherwise, be appraised, and that his exemptions as prescribed by the State law, subject to any liens thereon, be set aside and that he be allowed to retain possession of any part or parcel or all of the remainder of his property and pay for the same under the terms and conditions set forth in this subsection (s).

The property of the farmer is then appraised. The details of this procedure are a controversial issue and will be adverted to in the course of the brief.

Paragraph (2) of subdivision (s) of the Section provides:

> "(2) After the value of the debtor's property shall have been fixed by the appraisal as herein provided, the referee shall issue an order setting aside to such debtor his exemptions as prescribed by the State law, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien, and shall further order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof to the trustee of the creditors, if a trustee is appointed, such a lien to be subject to and inferior to all prior liens, pledges, or encumbrances. Such prior liens, pledges, or encumbrances shall remain in full force and effect, and the property covered by such prior liens, pledges, or encumbrances shall be subject to the payments of the claims of the secured creditors holding such prior liens, pledges, or encumbrances up to the actual value of the property as fixed by the appraisal provided for herein. All liens herein on livestock shall cover all increase, and all liens on real property shall cover all rental received or crops grown thereon by the debtor, as security for

the payment of any sum that may be due or past due under the terms and provisions of the next paragraph, until the full value of any such particular property has been paid."

Under the general provisions of National Bankruptcy Law (Section 70), upon adjudication, the title to the property of the bankrupt, with certain exceptions immaterial in the proceeding under review herein, passes to the trustee in bankruptcy.

Under paragraphs 3-6, Subdivision (s), Section 75, the trustee "with the consent of the lienholder or lienholders", is required to sell to the farmer, the land of the farmer on the terms therein prescribed. The lienholder in the proceeding under review herein did not actively or affirmatively consent to such sale, hence these paragraphs were not regarded as operative in the proceeding under review herein.

Paragraph (7) of the Subdivision (s) of Section 75 is the storm center of the controversy arising in the proceeding under review herein. The successive provisions of this paragraph may be thus analyzed, as applied to the proceedings under review herein:

(1) Provision is made: "If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of (the) debtor's property, as herein provided for * * * *," then certain steps are required to be taken. Such objections were filed in the proceedings under review herein.

(2) The next provision is that "the court, after having set aside the debtor's exemptions, as prescribed by the State law, shall stay all proceedings for a period of five years." The prescribed steps were taken in the proceedings under review herein.

(3) During the five years period just mentioned, "the debtor shall retain possession of all or any part of his property under the control of the court." Radford is accordingly still in possession of the farm in controversy in the proceeding under review herein.

(4) The retention of possession of his property by a debtor as just stated is predicated of the proviso that the debtor "pay a reasonable rental annually for that part of the property of which he retains possession; the first payment of such rental to be made within six months of the order staying proceedings." The referee (and his order was approved by the District Court), fixed the rental to be paid as just mentioned in the proviso quoted. The payment of such rental has not yet become due.

(5) The rental, when paid, is "to be distributed among the secured and unsecured creditors, as their interests may appear; under the provisions of this Act."

(6) Next it is provided:

> "At the end of five years, or prior thereto, the debtor may pay into court the appraisal price of the property of which he retains possession: Provided, That upon request of any lien holder on real estate, the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.
>
> "If the debtor fails to comply with the provisions of this subsection, the court may order the

trustee to sell the property as provided in this Act."

Radford has not at this time paid into Court any part of the appraised price of the property in controversy in the proceeding under review herein, or sought to reacquire the title to his land.

BRIEF AND ARGUMENT

I

THE ALLEGED DERELICTIONS OF RADFORD DO NOT DEPRIVE HIM OF RELIEF AS A DEBTOR UNDER THE ACT OF CONGRESS ON WHICH THIS PROCEEDING IS BASED.

As to the alleged derelictions of Radford, elaborated in the answer (Rec., pp. 41-43), and repeated in the brief filed in the District Court:

Section 75, National Bankruptcy Act, enacted March 3, 1933, gives "any farmer" the right to avail himself of its benefits. The same is true of paragraph 7 of the Frazier-Lemke Act.

The operation of neither Act is dependent upon the previous good conduct of the farmer. The Acts cited are not punitive and are not enacted as a reward for good behavior. They are enacted in the interest of the public welfare and to protect a man in the possession of his farm, not because of his good behavior, but because it is to the public interest a farmer be enabled to stay on the farm and not become a public charge.

A creditor cannot object to a voluntary proceeding in bankruptcy and an adjudication therein.

> "* * * a creditor has in no case a right to maintain a petition to vacate an adjudication of bankruptcy made in a voluntary proceeding."
>
> *In re Wagy & Co. (Inc.)*, 22 Fed. (2d) 9; 11 A. B. R. (N. S.) 95, 98 (9 C. C. A.).
>
> *In re Ives* (6 C. C. A.), 113 Fed. 911, 7 A. B. R. 692.
>
> *In re Ann Arbor Mach. Corp.* (6 C. C. A.), 274 Fed. 24, 48 A. B. R. 60.

2 *Collier on Bankruptcy* (13 Ed.), p. 1209, note 14.

1 *Remington on Bankruptcy* (4 Ed.), Secs. 49, 208.

Royal Indemnity Co. v. American Bond & Mortgage Co., 289 U. S. 165, note, 171.

Two grounds alleged against Radford seem worthy of special note:

(a) It is claimed Radford cannot save his farm because he was not willing to lose it by conveying it to the lienholder. As to this ground, we may well say, Res ipsa loquitor.

(b) It is claimed Radford should have refinanced his mortgage indebtedness to the lienholder by applying for a loan to Federal Land Bank, Louisville, Kentucky. In this connection there is neither pleading nor proof that if Radford had applied to the bank mentioned, he would have been able to borrow any amount, nor that if he had, the lienholder in the proceeding herein would have accepted the amount so borrowed in discharge of its debt.

The District Court in the proceedings at bar paid no attention to the alleged derelictions of Radford now under discussion. Counsel for the lienholder did not resurrect this point in the brief filed by them in the Circuit Court of Appeals. At this writing, counsel for the debtor has not been served with the brief to be filed for the lienholder in this Court. So this point is answered by counsel for debtor in an anticipatory mood and by way of precaution.

II

THE VALIDITY OF SECTION 75 DOES NOT DEPEND UPON THE APPOINTMENT OF A CONCILIATION COMMISSIONER.

Counsel for the lienholder, in the brief filed in the District Court attacked the validity of Section 75, as enacted March 3, 1933, and of which Frazier-Lemke Act is a part, by claiming that the operation of Section 75 depends upon the appointment of Conciliation Commissioners and hence is void.

Judge Dawson did not pass on this question in the District Court. The point was not made in the Circuit Court of Appeals.

The Act of June 7, 1934, (Section 8), made the appointment of Conciliation Commissioners obligatory upon the District Court.

But assuming that an Act unconstitutional in its entirety cannot be cured by amending it in part, but only by re-enacting it in its entirety, let us examine Section 75, as enacted March 3, 1933.

Subdivision (a) of the section provides for the appointment of conciliation commissioners in the circumstances stated. But the life and purpose of the law is not the appointment of conciliation commissioners. The Act provides for a new chapter entitled "Provisions for the Relief of Debtors" (47 Stat. at Large, p. 1467). The jurisdiction to be exercised thereunder is "for the relief of debtors."

If it be decided that Subdivision (a) of Section 75, enacted March 3, 1933, is void for the reason stated by counsel in the District Court, what becomes of the remainder of the law?

A law may be valid in part and invalid in part, provided:

(a) The exorcised part is not an essential element to the operative force and effect of the part not exorcised.

(b) It appears that Congress would have enacted the law independently of the unconstitutional part.

Part of a statute may be void and the remainder be valid.

Eilenbecker v. District Court, 134 U. S. 31.

If one part of a statute is valid and another invalid, the former may be enforced if not so connected with or dependent on the other as to make it clear that the Legislature would not have passed that part without the part that may be deemed invalid.

Southwestern Oil Co. v. Texas, 217 U. S. 114.

Assuming that clause (a) is out of the law, we begin with clause (b). The farmer is required to pay $10 "to be transmitted to the clerk of the court and paid into the treasury." The existence of a conciliation commissioner is not essential to the operation of this provision.

The remainder of this clause relates to conciliation commissioners and may be omitted on the theory that clause (a) is exorcised.

Subdivision (c) relates to the filing of a petition by a farmer:

> "At any time within five years after March 3, 1933, a petition may be filed by any farmer, stating that the farmer is insolvent or unable to meet his debts as they mature, and that it is desirable to

effect a composition or an extension of time to pay his debts."

It is true such petition may be received by a conciliation commissioner, but suppose there is none appointed under a valid law? Then the farmer may file his petition with the clerk.

The operation of clause (c) of Section 75 giving a farmer the right to file a petition is not dependent upon the appointment of a conciliation commissioner.

It is true under Subdivision (e), a conciliation commissioner is required to call a first meeting of creditors.

But under the general law on the subject of bankruptcies (Section 55), the Court, which by definition (Section 1), may include the referee (286 U. S. 269), "shall cause the first meeting of creditors to be held."

Section 38 of the law provides:

> "Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy."

Under Subdivision (a) of Section 75, a court may appoint "for such county one or more referees to be known as conciliation commissioners."

See General Order No. 50, par. 1.

So if Section 75 be void in so far as it provides for conciliation commissioners, the general law providing for referees in bankruptcy still protects the situation.

Subdivision (f) as to inventories may be void, in the absence of a conciliation commissioner and the law still be operative, because the Court would have power to have an appraisement made.

Subdivision (g) does not mention the conciliation commissioner. Nor does (h) and (i). All of these sections may operate through court action in the ab-

sence of such an official. The same is true of Subdivisions (j), (k), (l), (m), and (n).

If we take the conciliation commissioner out of (o), the power of the Court remains.

Subdivisions (p) and (r) do not mention the conciliation commissioner. And if a farmer can do without a conciliation commissioner if Subdivision (q) be eliminated.

Although the Frazier-Lemke Act purports to be an amendment of Section 75, approved March 3, 1933, the life of the Frazier-Lemke Amendment is not dependent upon the life of the rest of Section 75, and may exist without it.

The Frazier-Lemke Act begins by permitting a farmer, in the circumstances stated, to "amend his petition or answer, asking to be adjudged a bankrupt."

The entry of such judgment does not depend upon the existence of a conciliation commissioner.

The next provision relates to proceedings "at the first hearing." This may mean the first meeting of creditors. That meeting, if there be no conciliation commissioners, may be held by a referee.

Paragraph 1 does not mention the conciliation commissioner. Appraisers are to be appointed but the appointing power is not specified. Hence, the appointment may be by the Court in the exercise of its inherent power to administer the law. The Court may by special order or general rule vest this power in a conciliation commissioner. The Court, however, if there be no such officer, may discharge this function either by its own action or through a designated representative.

Paragraph 2, in the second line, uses the word "referee." Inasmuch as a conciliation commissioner, if appointed, is in effect a referee (see Section 1, Act of

March 3, 1933), the word "referee" as used in the paragraph mentioned evidently means a "conciliation commissioner," and should be so interpreted.

But if there be no conciliation commissioner, then the word "referee" stands alone and needs no interpretation.

Paragraphs 2, 3, 4, 5, and 6 constitute, construed together, a scheme of purchase, dependent for its operative force and effect upon the consent of the lienholder and may be wholly disregarded, so far as this proceeding is concerned.

This brings us to paragraph 7, in which the words "conciliation commissioner" do not appear. The word "court" is used. The word mentioned, under Section 1 of the Act, "may include a referee." A conciliation commissioner, if existent, is in effect, a referee (Section 1, Act March 3, 1933).

General Order No. 50, last paragraph.

But if no conciliation commissioner exists, all the powers prescribed in paragraph 7 of the Frazier-Lemke Act may be exercised by the Court, that is, the Judge, or per his order, by a referee in bankruptcy.

The conciliation commissioner was appointed for the convenience of the farmer and to reduce expense of administration. The absence of this convenience should not destroy the substantive relief which is the essence and life of the law.

III

THE TENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES HAS NO BEARING ON THE PROCEEDING UNDER REVIEW HEREIN.

It may be conceded, as counsel for the lienholder

contended in the Circuit Court of Appeals, that "the Federal Government is one of delegated powers", that the sole authority of Congress to enact the Frazier-Lemke Act is predicated of the Constitution (Art. I, Sec. 8): The Congress shall have power "to establish * * * uniform laws on the subject of bankruptcies throughout the United States," and that if the Frazier-Lemke Act is not such a law, it is void.

The question then remains (discussed infra), what is a uniform law on the subject of bankruptcies throughout the United States, and does the Frazier-Lemke Act measure to that standard?

For, when a power is found to be one delegated to Congress, the law-making body is not in the exercise of its power "cabin'd, crib'd, confin'd," but the power is rather as "broad and gentle as the cas'ing air."

In 1 Rose's Notes, page 871, the following statements are extracted from *McCulloch v. Maryland*, 4 Wheat. 316:

(a) The United States Government is one of enumerated powers; it can exercise only the powers granted to it by the Constitution.

(b) In order to carry into execution the powers granted by the Constitution, Congress may employ those means in its judgment the most advantageous. Where such means are really calculated to effect the object entrusted to Congress, the courts cannot inquire into their necessity.

McCulloch v. *Maryland* is a landmark in the course of the judicial unfoldment of the doctrine of delegated powers. That case upheld the power of Congress to establish a bank, although the word "bank" does not appear in the Constitution. The strict constructionists

of the Constitution were, have been, and no doubt, will continue to be, loud and long in their protestations that the people did not delegate to Congress the power to establish a bank, but the fact remains, had *McCulloch v. Maryland* been decided otherwise, Louisville Joint Stock Land Bank would not be in existence.

How did the Court, in *McCulloch v. Maryland*, discover the existence of the constitutional power of Congress in the establishment of a bank? By this statement:

> "Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional."
>
> *McCulloch* v. *Maryland*, 4 Wheat. 316, 421 (Marshall, C. J.).

The debtor in this case asks at the hands of this Court, in the determination of his legal rights, the same principle which guided the Supreme Court aright in unfolding the genesis of the lienholder in the case cited.

IV

A UNIFORM LAW ON THE SUBJECT OF BANKRUPTCIES ENACTED BY CONGRESS UNDER ITS CONSTITUTIONAL GRANT OF POWER IS NOT LIMITED TO A SALE OF ASSETS, A DISTRIBUTION OF THE PROCEEDS THEREOF, AND A DISPOSSESSION OF THE DEBTOR. A VALID LAW ON THE SUBJECT MENTIONED MAY INCLUDE REASONABLE PROVISIONS FOR A MORATORIUM TO THE DEBTOR AND A RE-

PURCHASE BY HIM OF PROPERTY A PART OF THE ESTATE IN BANKRUPTCY.

The underlying question in this case may be thus stated:

What is a uniform law on the subject of bankruptcies throughout the United States?

Counsel for the lienholder undertook in the District Court to answer the question just outlined in this wise:

A law on the subject of bankruptcies in the United States in the year 1934 must in effect be a replica of the bankruptcy laws in effect in England in the year 1789, the date of the adoption of the Constitution, and inasmuch as those laws did not permit a voluntary proceeding in bankruptcy, were limited in their scope to traders, and contemplated only a sale of assets and a distribution of proceeds, with no right to a discharge without the consent of creditors and no provision for a composition, the Act of March 3, 1933, plus the Acts of June 7, 1934, (Corporate Reorganization Act), and June 28, 1934, (Frazier-Lemke Act), are void.

It is true, as a matter of historical accuracy, that the bankruptcy laws in force in England in 1789 did not permit voluntary proceedings and were limited in their operation to traders.

Hanover National Bank v. Moyses, 186 U. S. 181, 184, 185.
Adams v. Storey, 66 Fed. Cas. 66.
In re Klein, Fed. Cas. 7866.
Friday v. Hall & Kane Co., 216 U. S. 449.
1 *Remington on Bankruptcy*, (3 Ed.), p. 1.
Leidigh Carriage Co. v. Stengel (6 C. C. A.), 95 Fed. 647.
Section 1, *National Bankruptcy Act*, 11 U. S. C. A., p. 4, Section 1 and note.

But in *Hanover National Bank v. Moyses*, 186 U. S.

181, Moyses had been sued in Tennessee on a judgment recovered in Mississippi. Moyses filed a voluntary petition in bankruptcy and was granted a discharge from his debts. The validity of the proceedings in bankruptcy was challenged *inter alia* on the ground that the National Bankruptcy Act of 1898 included voluntary proceedings and was not limited to involuntary proceedings against traders and hence invalid. This contention was denied by the Supreme Court of the United States. Attention was called to the fact that Mr. Justice Livingston had expressed a doubt "whether an act of Congress subjecting to such a (bankruptcy) law every description of persons within the United States" would have been valid (186 U. S. 184).

The Supreme Court said: "But this doubt was resolved otherwise," and called attention to the fact that the several bankruptcy laws passed in 1841, 1867 and 1898, respectively, provided for voluntary proceedings and extended to persons other than merchants or traders (186 U. S. 184).

The Supreme Court, in the case just cited, quoted approvingly Mr. Justice Story, in his Commentaries on the Constitution, to the effect that the fact that the English bankruptcy laws applied only to traders "was a mere matter of policy, and by no means enters into the nature of such laws" (186 U. S. 185).

In re Landquist (7 C. C. A.), 70 Fed. (2d) 729, is an elaborate opinion, to be read in its entirety, upholding the constitutionality of Section 74, Act March 3, 1933. By a parity of reasoning, Section 75 of the same Act, including Frazier-Lemke Amendment, is likewise constitutional.

In re Landquist, supra, the Court ruled that the object of our laws upon the subject of bankruptcies "for

more than ninety years at least, has been the benefit and relief of creditors and debtors in cases where the debtors are unable to pay their debts, and the Constitution is sufficiently broad to accomplish this purpose, so long as the means are uniform in their application."

Counsel for the lienholder, in their brief in the District Court, referred to *In re Landquist, supra*, and attempted to distinguish that case from the one at bar, by arguing that while Section 74, Act March 3, 1933, may be constitutional, Section 75 of the Act, of which Frazier-Lemke Act is a part, is not constitutional. It was claimed that inasmuch as "Section 74 requires only such extension and composition as is agreed to by a majority in number of creditors representing a majority in amount of claims, * * * " then an extension granted without the consent of a minority of the creditors does not deprive such a minority of their rights." But if Congress may extend the time of payment of a debt without the consent of one or more creditors (that is, the minority), why may Congress not extend the time for the payment of a debt without the consent of any creditor? The difference is one of degree, not of kind, involving legislative discretion, not constitutional rights.

In re Chicago, Rock Island & Pacific Ry. Co. (7 C. C. A.) 72 Fed. (2d) 443, the court said:

> "Under the Federal Constitution, Congress 'is authorized to enact such bankruptcy legislation as it may deem wise and appropriate. The constitutional grant of authority is not conditional nor limited,' save as to uniformity."

The Court continued:

> "Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appro-

priateness to the purpose of the legislation so long as said means did no violence to the Constitution."

In the Rock Island case just cited, the Court referred to "* * * legislation which deals with the subject of bankruptcy, that is, legislation for the relief of debtors and creditors."

The Court referred to Section 77, relating to a reorganization of railroads, and stated that it (the section) "calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced), so that the debtor may live * * *."

The Court continued:

> "The Court violated no right of the appellants of which they could complain when it temporarily stayed the enforcement of their remedy arising out of the pledge of the collateral.
>
> "As to the constitutionality of Section 77 of the Bankruptcy Act, little need be said in addition to what has already been stated, to show this objection is untenable. If the order assailed deals merely with the remedy, as we hold it does, then the amendments violate no provision of the Constitution. That such restraining orders affect the remedy only, see *Allebach v. Thomas,* 16 F. (2d) 853. Likewise, legislation which deals with the subject of bankruptcy, that is, legislation for the benefit and relief of creditors and debtors,—is not subject to the same constitutional limitations as legislation which deals with other subjects and which affects contractual rights and obligations of debtors and creditors. The grant of power 'to establish * * * uniform laws on the subject of bankruptcy' was necessarily a grant of power, the exercise of which would impair the obligation of contracts. For legislation on the subject of bankruptcy, contemplates a discharge of the debtor's debts—which is an impairment of contractual obligations. *Hanover National Bank v. Moyses,* 186 U. S. 181."

Judge Wells' opinion (Fed. Cas. 7866) undertook to criticize Mr. Justice Story's Commentaries on the Constitution, who had said: "* * * a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provision for cases of persons failing to pay their debts" (14 Fed. Cas. p. 727).

But Judge Wells was reversed on appeal to the Circuit Court where Mr. Justice Catron (*In re Klein*, Fed. Cas. 7865), "held the bankrupt act of 1841 to be constitutional, although it was not restricted to traders, and allowed the debtor to avail himself of the act on his own petition, differing in these particulars from the English acts" (186 U. S. 186).

The opinion of Mr. Justice Catron, and especially the syllabi thereto, should be read in its entirety.

Bankruptcy laws "are not confined in their operation to the same class of persons nor to the same methods of procedure prevailing on the subject of bankruptcies 'when the Constitution was adopted'."

1 *Remington on Bankruptcy* (3 Ed.), p. 29.
Section 1, *National Bankruptcy Act*, 11 U. S. C. A., Sec. 1, p. 6, note 6.
Loveland on Bankruptcy (3 9d.), p. 17.

In re Jackson, Fed. Cas. 7124 (Blatchford, D. J., afterward Mr. Justice Blatchford): Congress has power in passing bankruptcy laws "to enact any and all forms of legislation tending to promote the distribution of an insolvent's estate among his creditors and his discharge from their demands," so long as such laws are uniform.

Section 1, *National Bankruptcy Law*, 11 U. S. C. A. Sec. 1, p. 4, note.

"The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-pay-

ing or fraudulent debtor and his creditors, extending to his or their relief." (6 C. C. A., Simons, J., Rec., p. 107.)

Kunzler v. *Kohaus*, 5 Hill (N. Y. 317), an exhaustive discussion by Cowen, J., concurred in by Nelson, J., afterward Mr. Justice Nelson, decided *inter alia*: "The power conferred is without restriction save in its uniformity. It is plenary and in reference to its subject may be exercised with the same latitude as the like power has been or may be exercised by the British Parliament," (5 Hill, 326), citing Chancellor Kent.

As to the plenary nature of the grant of power to Congress by the Constitution to enact uniform laws on the subject of bankruptcies, consult:

In re F. A. Hall Co., 121 Fed. 992 (Referee Munn, affirmed by Platt, District Judge).
Hurley v. *Devlin*, 151 Fed. 919, 921.
Silverman's Case, Fed. Cas. 12855.

In re Reiman, Fed. Cas. 11673, (Blatchford, then District Judge); affirmed, per Mr. Justice Hunt, 20 Fed. Cas. 501, who observed:

> "The argument, that the subject of bankruptcies is to be interpreted and limited by the British and colonial statutes, as they existed at the time of the separation of this country from Great Britain, is quite too narrow. No country can afford to be thus cut off from all possible improvement in its legislation."

See also, In re California Pac. R. Co., Fed. Cas. 2315 (Exhaustive discussion);

United States v. *Pusey*, Fed. Cas. 16098, in which the Court ruled:

> "A very compact and pointed description, or

> definition of a bankrupt law occurs in the debates on a bankrupt bill in the house of representatives in eighteen hundred and eighteen. It was there said: 'Perhaps as satisfactory description of a bankrupt law as can be framed is, that it is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts. And a law on the subject of bankruptcies in the sense of the constitution, is a law making provision for cases of persons failing to pay their debts.' 4 Elliott, Deb. 282. The 'subject of bankruptcy', in a general sense, concerns the relation of debtor and creditor, and in a particular and, no doubt, stricter sense, concerns such relation in cases where the debtor is unwilling or unable to pay his debts."

The Court further observed that the expression, "subject of bankruptcies", as used in the constitution, "in a general sense, * * * concerns the relation of debtor and creditor * * *. True, the expression has a limited signification, that is, that it concerns the relation of debtor and creditor in cases where the debtor is unable or unwilling to pay his debts * * *" (27 Fed, Cas. 633).

> 1 *Collier on Bankruptcy*, (13 Ed.), p. 8.
> *Loveland on Bankruptcy*, (3 Ed.), p. 19.
> 7 *Corpus Juris*, p. 19, Sec. 9.

Speaking of the power of Congress with respect to the enactment of a uniform law on the subject of bankruptcies, the Supreme Court has said:

> "Congress may prescribe any regulations concerning a discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law" (186 U. S. 192).

Congress has the plenary power to pass a uniform law on the subject of bankruptcies. Hence Congress

may pass a law on that subject in any form it chooses, so long as the law passed is uniform, and not unreasonable.

The attention of the Court is called to a definition of a bankruptcy law "in modern legal significance" (7 Corpus Juris, p. 17, Section 1) and to the objects of such a law (3 Ruling Case Law, pp. 309, 310).

See, also, 7 *Corpus Juris,* p. 19 Section 10.

An insolvent law has been defined to be: "* * * a positive regulation made by the legislature to exonerate the person or property of a debtor and to relieve him from the pressure of debts" (32 Corpus Juris, p. 811, Section 5).

And "a bankrupt law may contain those regulations which are generally found in insolvent laws" (186 U. S. 185, 186).

Hence, a bankrupt law may exonerate the person or property of a debtor and discharge him from the payment of his debts.

> "It has long been the policy of the law to protect debtors who are unable to pay all of their obligations, to the extent that certain property shall not be subject to levy or seizure under execution. Provisions to this effect may be found in the statutes of the several states."

12 *Modern American Law,* p. 281.

In the proceeding at bar, the Circuit Court of Appeals said of the opinion of Mr. Justice Catron, *In re Klein,* reported in the note to *Nelson* v. *Carland,* 1 How. 265, 277 (Rec., pp. 104, 105): "Whether the limits drawn by Mr. Justice Catron mark the ultimate of the modern concept of bankruptcy it is not necessary to decide, for

they are sufficient for present purposes. It has been said that distribution of property is the principal object to be attained and that the discharge of the debtor is merely incidental * * * but this but illustrates the historical development of bankruptcy legislation."

> "The term 'bankruptcy' originally was used to denote the condition of a trader or a merchant who was unable to pay his debts in the due course of business" (to which may be added, and who had committed a statutory act of bankruptcy.)
>
> "* * * insolvent laws were originally intended to discharge the person of the debtor from arrest or imprisonment. His future acquisitions are still subject to the demands of his creditors."
>
> "Bankruptcy laws discharge absolutely the debtor and the debt."
>
> "* * * a bankruptcy law may contain provisions generally applicable to insolvent laws and insolvent laws embrace many of the essentials of bankruptcy laws."

12 *Modern American Law*, p. 263.

In considering the power of Congress to enact uniform laws on the subject of bankruptcies, the following should be considered:

> "When the Constitution was adopted the English law divided the general subject into two parts, insolvency and bankruptcy; which were administered by different courts, and to some extent upon different principles. The insolvent law was applied to persons who were imprisoned for debt, and who asked for a discharge from prison upon a surrender of all their property; the bankrupt law was applied only to traders, and always upon the suit of their creditors against them—never upon the application of the debtors. It was strenuously insisted in Congress in 1840, that the word 'bankruptcies' in the Constitution was to be understood in a technical sense, and that the legislature

had no power to provide a system of bankruptcy for persons who were not traders, nor to permit debtors to begin the proceedings upon their own voluntary petition. This opinion has not prevailed, either in Congress or in the courts. It is now fully established that the grant of power is broad enough to permit Congress to provide for the settlement of the affairs of all insolvent debtors." (John Lowell.) 1 Cyclopedia of Political Science (Maynard, Merril & Co.) p. 223.

"In strictness, 'bankrupt' laws apply only to traders or merchants, and 'insolvent' laws to all other persons." Anderson's Law Dictionary, p. 553; see also p. 107.

Black's Law Dictionary, p. 118.
1 *Bouvier's Law Dictionary*, (Third Revision by Francis Rawle), pp. 320 *et seq.*
1 *Words and Phrases* (1st Ed.), pp. 701, 702 and cases cit.

In construing National Bankruptcy Law, no distinction is made between so-called insolvency laws and so-called bankruptcy laws.

Hanover National Bank v. *Moyses*, 186 U. S. 181, 184, 185.
Sturges v. *Crowinshield*, 4 Wheat. 122, 195.

The formation of the Constitution of the United States of America was the result of a compromise of conflicting views and the balancing of interests. As was pointed out in *The Minnesota Mortgage Moratorium Case*, (290 U. S. 348), some of the states were classified as debtor states and some as creditor states. The creditor states were naturally fearful that if the debtor states exercised the inherent plenary power of government to cancel debts, as immemorial as Deut. 15: 1, the debtor states would probably cancel the debts owing by the inhabitants of the debtor states to the inhabitants

of the creditor states. To ally these fears, a prohibition was inserted in the Federal Constitution which forbade a State to impair the obligation of a contract. As a result of this constitutional provision, a State may not, even in the absence of congressional legislation pass a bankruptcy law which impairs the obligation of a previously executed contract, nor which attempts to discharge a debt due a non-resident of the State who does not become a party to the proceeding in bankruptcy.

Sturges v. *Crowninshield*, 4 Wheat. 122.

At the same time, the constitutional convention recognized that laws on the subject of bankruptcies had been an integral element of every civilized system of jurisprudence for centuries. Man is naturally optimistic. He indulges in the expectations of hope and often becomes a capitalist by way of anticipation rather than by way of realization. In other words, through a change in economic conditions, individuals often find themselves indebted far beyond their apparent ability to pay. In such circumstances, burdened with a debt which is unpayable and which would be inescapable, in the absence of a law permitting a discharge of the obligation thereof, the activities of individuals are seemingly paralyzed and finding themselves unable to pay their debts in full, insolvents make no effort to pay any portion at all of their outstanding obligations. Often such a condition of thought results from the fact that an extension of credit is important to the transaction of business. Insolvents are not usually extended credit. Hence they find themselves unable to engage in business.

In such an emergency, the wisdom of economics

touches us, it is better for a man to pay part of his debts and again become an active member of society, instead of paying no part of his debts and not doing his part in the restoration of prosperity to a debt ridden nation.

Hence the several states agreed that the power to establish a uniform law on the subject of bankruptcies should continue to be existent as a part of our governmental structure, but should be vested in Congress. The prohibition against the impairment of the obligation of a contract was not extended in the Constitution to include an act of Congress. (186 U. S. 186)

> "'No state shall pass any law impairing the obligation of contracts.' This provision was inserted in the Constitution without little debate, and undoubtedly for the purpose of preventing the states from passing laws repudiating private debts, a form of legislation which had proved popular in some of the states in the period of quasi anarchy that followed the revolution."
>
> 6 *Page on Contracts* (2nd. Ed.), sec. 3635, p. 6295.

> "By terms, this clause of the Constitution provides that no state shall pass the laws in question. It does not therefore, restrict the power of the United States government. If in the exercise of its authority the United States passes an act otherwise constitutional which impairs the obligation of contracts, such act is not on that account objectionable. A federal bankruptcy act which discharges debts existing before its passage . . . (is) valid."
>
> 6 *Ib.*, sec. 3636, pp. 6296, 6297.
> See *The Gold Cases*, decided March 4, 1935; also 7 Fed. Supp 1.
> *In re Jacobs*, 7 Fed. Supp. 749.

It is well settled that our Constitution is a practical instrument designed to accomplish a practical

result. The power to cancel debts has existed, as previously herein stated, for centuries. Great minds such as Mr. Chief Justice Marshall, Mr. Chief Justice Fuller, Mr. Justice Story, and Mr. Justice Catron, reached the conclusion that the power to establish a uniform law on the subject of bankruptcies carried with it as an incident the power to cancel every obligation, by way of debt, arising out of contract. If these jurists had limited the power of Congress in the establishment of a uniform law on the subject of bankruptcies, to the type of such laws prevailing in England in 1789, a debtor could never have cancelled the obligation of a debt, unless a creditor saw fit to place the debtor in bankruptcy. In such case the debtor would be allowed only a limited right of discharge from his debts. Hence in the exercise of that judicial wisdom, which is characteristic of their careers, these eminent jurists, two of them speaking for this Court (4 Wheat. 122; 186 U. S. 186), construed the power to establish uniform laws on the subject of bankruptcies to include every form of legislation incident to the relation of debtor and creditor. (Rec., p. 407.)

At this writing, (March 27, 1935), counsel for the petitioner have not served their brief in this Court upon the counsel for the respondent. So far as counsel for respondent are advised, that brief is still in transit. Hence counsel for respondent are compelled to assume that many, if not all, of the points made by the lienholder in the District Court and in the United States Circuit Court of Appeals will be restated in this Court and shall act accordingly.

CERTAIN OBJECTIONS OF LIEN HOLDER

DISTRIBUTION

The counsel for the lienholder in the brief filed in

the District Court stressed the thought of "distribution." We quote: "The cardinal element of laws on the subject of bankruptcies within the meaning of the Constitution is the distribution of an insolvent debtor's assets among his creditors."

From the use of the definite article "the" and the maxim, the expression of one is the exclusion of another, it would seem counsel were of the opinion that the subject of bankruptcies connoted the subject of distribution; "only that and nothing more."

But in the brief in the Circuit Court of Appeals, counsel said:

> "Judge Dawson correctly stated that: 'A fundamental essential of all bankruptcy laws under the Constitution is the reasonably prompt distribution among his creditors of the value of the property of the debtor unable or unwilling to pay his debts.'"

Here we have the indefinite article "a", an abandonment of the maxim quoted, and a recognition of a distribution "of the value of the property of the debtor," as an element, merely, of a bankruptcy law.

Indeed property until converted into money is incapable of being distributed in a proceeding in bankruptcy.

It should be remembered (a) The lienholder in the proceeding at bar is not asking for a distribution of the value of the debtor's property. The lienholder is seeking to apply the proceeds of the sale of debtor's farm to the payment in full of its mortgage thereon. (b) In the District Court, counsel for lienholder stated their concept of a law on the subject of bankruptcies in this wise:

> "At the time of the adoption of the Constitution

of the United States, bankruptcy was limited to involuntary proceedings, primarily for fraud against persons engaged in commerce, i. e., traders, brokers, and merchants. Their property was seized for the benefit of, and distributed ratably among their creditors. Voluntary proceedings were unknown. Discharge from their debts was only granted if their assets were sufficient to pay a certain percentage of their debts (Remington on Bankruptcy, 4th Ed., Vol. I, p. 12.)"

Quotation was made from the Federalist, to which was added:

"Inferentially this statement indicates the bankruptcy power was granted to Congress to prevent commercial frauds."

Counsel however did not claim, in exact words, that the prevention "of commercial frauds" was the only purpose of a law on the subject of bankruptcies under the Federal Constitution. A power declared to be "plenary" is not subject to such a limitation.

Counsel then admitted: "Be that as it may, the Supreme Court soon indicated that it was proper to incorporate in bankruptcy laws certain elements of bankruptcy laws (Sturgis v. Crowninshield, 4 Wheat 122), and voluntary proceedings and discharge of honest debtors, upon turning over all their assets for distribution among their creditors have become accepted as legitimate provisions of bankruptcy laws."

The portion of the brief in the District Court from which we have just quoted was revised in the Circuit Court of Appeals to read: "Without attempting to state the scope of bankruptcy laws in England at the time of the adoption of the Constitution," (Citing historical references), "it is sufficient to say that the term 'bankruptcy' is not to be given a technical and rigid

meaning confined to the content of the laws of England existing when the Constitution was adopted."

Why this concession? Because counsel for the lienholder discovered that under the laws of England existing when the Constitution was adopted, the payment of secured claims in full was not contemplated as an element in a law on the subject of bankruptcy. Traders to whom the English laws were limited, were not expected to owe secured debts.

Counsel then, in the brief filed in the Circuit Court of Appeals, continued:

> "In the four separate bankruptcy acts (1800, 1841, 1867, and 1898) and the amendments thereto, Congress has (1) widened the class of persons to which bankruptcy laws apply, (2) liberalized the provisions for discharging debtors from their obligations, (3) authorized voluntary as well as involuntary proceedings, and (4) authorized 'compositions' between the debtor and his creditors, which under certain conditions are made binding on a minority of non-assenting creditors."

But if Congress may "widen" and "liberalize" such laws between 1789 and 1933, as counsel for lienholder have conceded, why stop on March 1, 1933?

In the District Court, counsel for the lienholder cited *United States* v. *Fox*, 95 U. S. 670. Fox was indicted for violating a criminal statute relating to the subject of bankruptcies. The Court said of Congress:

> "And as it is authorized 'to establish uniform laws on the subject of bankruptcies throughout the United States,' it may embrace within its legislation whatever may be deemed important to a complete and effective bankrupt system." (672.)

Counsel for the lienholder also cited the opinion in the *Fox* case to the effect (italicized by counsel):

"*The distribution of the property is the principal object to be obtained,*" but in the *Fox case*, the court did not prescribe outlines limiting Congressional action; (consult opinion Judge Simons, Rec. p. 105; "* * * this but illustrates the historical development of bankruptcy legislation.'"

> "It is quite obvious that much of the difference of opinion with respect to the meanings of the word (bankruptcy) has been occasioned by trying to define it in terms of past legislation rather than by the root meaning of the word and the broad terms of the Constitution * * * where plenary power is given by the Constitution, and Congress sees fit to use only a part of it, that fact will not prevent Congress from exercising the full power whenever it chooses to do so."
>
> *In re Landquist*, 70 Fed. (2d) 929, 932, 933.
> Also, *Home Bldg., etc. v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231, 252.
> *Norman v. B. & O.*, 55 S. Ct. 407.

Curiously, counsel for the lienholder, in the proceeding at bar, both in the brief in the District Court and in the Circuit Court of Appeals, referred to *Hanover National Bank* v. *Moyses*, 186 U. S. 181, 186, and to the citation therein of *In re Klein*, 1 How. 277 (note.) In view of the reliance placed upon these two cases respectively by Judge Dawson and the Circuit Court of Appeals in the proceeding at bar (Rec. pp. 54, 55, 104, 107), it is somewhat difficult to understand what consolation counsel for the lienholder derives therefrom. Perhaps the word "distribution" attracts their attention. But, as has already been shown, the lienholder in the proceeding at bar has not asked for "distribution."

In *Nelson* v. *Carland*, 1 How. 265, 274, a dissenting opinion was filed by Mr. Justice Catron. The learned

jurist quoted from an opinion by Wells, District Judge (In re Klein, Fed. Cas. 7868), which Mr. Justice Catron had reversed on appeal to the Circuit Court. (In re Klein, Fed. Cas. 7869). Both in the District Court and in the Circuit Court of Appeals, counsel for the lienholder quoted Judge Wells' overruled opinion as a part of Mr. Justice Catron's opinion.

The contention of the lienholder in the District Court, repeated in the brief in the Circuit Court of Appeals:

> "* * * any law to be a law on 'the subject of bankruptcies' must provide for the speedy and ratable distribution of a debtor's assets among his creditors."

is answered by the opinion of the Circuit Court of Appeals. (Rec. p. 104)

In the Circuit Court of Appeals, counsel for the lienholder contended:

> "The Frazier Lemke Act does not provide for a reasonably prompt distribution to creditors of the value of debtor's property."

As to this, consult, Rec. p. 104.

Counsel for the lienholder contended in the Circuit Court of Appeals:

> "Laws which do not dispossess insolvent debtors of their property and distribute it speedily and ratably among their creditors are not 'laws on the subject of bankruptcies.'"

Let us analyze this statement: (a) Under the Frazier Lemke Act, an insolvent debtor is dispossessed of his property.

Under subdivision (s), he may be adjudicated a

bankrupt. Bradford, the debtor in the proceeding at bar, was thus adjudicated. (Haw., p. 51.)

Under section 70, National Bankruptcy Law, the trustee in bankruptcy of the estate of Bradford (Haw., p. 76), has become "vested by operation of law" with the title of Bradford to his farm, (see subdivision (n), section 70), and Bradford has become a tenant (Haw., p. 82), whose right to possession as such is dependent upon his paying the rental fixed by the Court. (Note concluding sentence, paragraph 7, Frazier-Lemke Act.) As to distributing the assets of debtors "equally and ratably among their creditors".

The Constitution contains no requirement as to "equal." Any use of that word in describing former laws on the subject of bankruptcy, "but illustrates the historical development of bankruptcy legislation." (Haw., p. 105.) Congress in enacting a law on the subject of bankruptcy is not limited to its previous concepts.

In re Landquist, 70 Fed. (2d), 928, 931.

"The fact that the Frazier-Lemke Act is novel and without precedent in our bankruptcy legislation . . . does not conclude the question as to whether the subject matter is fairly germane to bankruptcy legislation."

In re Bradford, (U. S. Md.) 7 Fed. Supp. 668, 674.

Counsel for the lienholder contend that a law which does not distribute the property of an insolvent "ratably among his creditors" is not a law on "the subject of bankruptcies" and hence void.

The lienholder in the proceeding at bar is not asking for a "ratable distribution" of the assets of a debtor;

it is asking for an exclusive application of property to the payment of a secured debt.

A bankruptcy court may sell encumbered property and distribute the proceeds of such sale.

4 *Remington on Bankruptcy*, (3 Ed.), p. 58, sec. 2377.

Counsel for the lienholder in the Circuit Court of Appeals and in the District Court cited the opinion of Mr. Justice Catron, *in re Klein*, 1 How. 277, Fed. Cas. No. 7865, as creating a limitation upon the plenary power of Congress to establish uniform laws on the subject of bankruptcies. Neither this Court (181 U. S. 186), nor the Circuit Court of Appeals (Rec., p. 104), so construed the language of Mr. Justice Catron, *In re Klein*, *supra*.

True the learned jurist used the word "distribution" but in the proceeding at bar, the lienholder is not asking for a distribution. It is seeking to foreclose a mortgage and obtain payment in full of its debt.

DISCHARGE OF THE BANKRUPT

Paragraph 7 of subdivision (s) of section 75, National Bankruptcy Law, the Frazier Lemke Act, herein challenged as invalid, permits a bankrupt, in the contingencies therein mentioned, to "apply for his discharge as provided by this Act."

The words, "this Act", as hereinbefore cited, self evidently mean the National Bankruptcy Act, of which Frazier-Lemke Act is a part. The National Bankruptcy Act (sec's 14-17), specifies in detail the circumstances in which a debtor may apply for a discharge, the debts not affected by such discharge and the hearing required to be had in passing on such discharge. (Consult, also, sec. 58.)

In the face of these provisions, counsel for the lien holder contended in the District Court, and in the Circuit Court of Appeals:

> "The Court is given no discretion but is *summarily directed* to grant the debtor a discharge upon payment by the debtor at any time within five years of the appraised price of his property, whether or not it satisfies any substantial part of his indebtedness and irrespective of his then financial worth."

As to the claim that the debtor may pay "at any time within five years" * * * "the appraised price of his property, whether or not it satisfies any substantial part of his indebtedness," such a result is a natural incident to any sale made in bankruptcy.

The sufficiency of the price bid depends on the value of the property, not upon the amount of the incumbrance.

As to the debtor becoming a purchaser of his former estate in the future, "irrespective of his then financial worth"; the effect of a discharge is to "release a bankrupt from all his provable debts" (sec. 17). Provable debts are defined by section 63 and include all fixed liabilities "absolutely owing at the time of the filing of the petition * * * whether then payable or not."

A trustee in bankruptcy takes title to property owned by the debtor at the date of the petition. (Sec. 70 N. B. A.)

Property acquired by a debtor after the filing of a petition in bankruptcy cannot be subjected to the payment of debts as to the obligation of which the debtor has been granted a discharge.

United States Code, Annotated, sec. 70, p. 419, note 401.

And a debtor may repurchase his former property which has passed to his trustee in bankruptcy.

In re Cope, 8 Fed. Supp. 778, 783, quoting *Tracy v. Clews*, 115 U. S. 528, 541.

ADMINISTRATION OF ESTATE

Counsel for the lienholder cite authority to the effect that under a bankruptcy law, "the administration of the bankrupt's effects belong to his creditors and not to himself."

Under the Frazier-Lemke Act, a debtor does not administer his own estate. The debtor may become a tenant of the estate and pay rent for the property formerly owned by him. That of itself is nothing new in the bankruptcy law. Under the old bankruptcy law, a debtor might become tenant as to his own estate. The Act provides (sub. b.): "If the creditors desire supervision over the farming operations of a farmer," the cost thereof may be paid as provided in the Act.

Under subdivision (n) of the Act, "the farmer and his property" become subject to the jurisdiction of the bankruptcy court. In view of these provisions, how can it be claimed a debtor farmer administers his own affairs?

COMPOSITIONS

In the brief filed in the District Court, counsel for the lienholder claimed that involuntary compositions were unconstitutional, citing as an authority, a dissenting opinion by Mr. Justice Harlan.

In the Circuit Court of Appeals, it was conceded that compositions "between the debtor and his creditors, which under certain conditions are made binding

on a minority of consenting creditors" were valid. Consult, Rec., p. 106.

ENFORCEMENT OF CONTRACT LIEN

In the brief in the District Court, counsel for the lienholder contended: "There has never been any suggestion in the Federal decisions that a debtor may compel a secured creditor to accept 'an appraised value' of the pledged property, instead of being allowed to enforce his contract lien upon the property itself." Inasmuch as Congress under its power to enact uniform laws upon the subject of bankruptcies, may impair the obligation of a contract, it may of course, impair the validity or integrity of a lien.

As to the annulment of a lien by operation of the National Bankruptcy Law, consult 11 United States Code, Annotated, section 67, p. 188, note 152:

Clarke v. *Larrimore*, 188 U. S. 486.
4 *Remington on Bankruptcy* (3d. Ed.) pp. 681 *et seq.*
In re Jordan, Fed. Cas. 7514, holding Congress can avoid all liens, created by contract or otherwise.

As to the impairment of a contract by the operation of a law on the subject of bankruptcies:

11 *United States Code, Annotated*, sec. 1, p. 5.

JUDGE BOURQUIN'S OPINION

In the brief filed in the District Court, counsel for the lienholder cited an opinion of Judge Bourquin (*In re Conciliation Commissioner*, 5 Fed. Supp. 131), in which the learned judge expressed his views with respect to the Frazier-Lemke Act. But although Judge Bourquin did weep at the act, he did take his share by appointing a conciliation commissioner of his own choosing.

"SCALING DOWN DEBTS"

Counsel for the lienholder denounce a law which, it is said, results in the scaling of debts.

But as Judge Simons has pointed out (Rec., p. 110), the scaling of debt in the case at bar, results from the insolvency of the debtor and the well known right of Congress in the establishment of uniform laws on the subject of bankruptcies, to provide for a discharge of the debtor.

Hanover National Bank v. *Moyses*, 186 U. S. 180.

MORATORIUM

Counsel for the lienholder, in the brief filed in the Circuit Court of Appeals, stated that the Act "gives the debtor the option to prevent any distribution for five years * * *." (Consult, Rec., p. 107.)

In the *Minnesota Mortgage Moratorium Case*, 290 U. S. 398, 442, a moratorium was upheld against the contention that it deprived the mortgagee of its properties without due process of law.

Counsel for the lienholder, in the District Court contended that the Frazier-Lemke Act prohibited "a creditor for a period of five years from enforcing his rights against his debtor and his security."

This statement is inaccurate. During the five years' period, the lienholder is entitled to be paid a reasonable rental annually for the use of the property by the debtor.

> "It is always open to judicial inquiry whether the emergency still exists upon which the continued operation of the law depends." (290 U. S. 398, 442.)

If five years be too long a moratorium, the Court may shorten the period thereof.

Chastleton Corporation v. *Sinclair*, 264 U. S. 543.

An important distinction should here be noted between the effect of a state statute, such as the one construed in *The Minnesota Mortgage Moratorium case*, supra, and the effect of a law on the subject of bankruptcies.

Under the Fifth Amendment, Congress may not deprive a person of his property without due process of law.

Under the Fourteenth Amendment, a State may not deprive a person without due process of law.

What constitutes due process of law under either of these amendments self evidently likewise constitutes due process of law under the other.

Twining v. *New Jersey*, 211 U. S. 78, 101.

Hence if a moratorium constitutes due process of law under the Fourteenth Amendment as to the law of a State, it necessarily constitutes due process of law under the Fifth Amendment as to a law passed by Congress.

But as to the impairment of the obligation of a contract: Congress may impair the obligation of a contract (7 Fed. Supp. 6, 7), but a State may not. (*United States Code, Annotated*, Const. Art. 1, sec. 10, p. 31.)

So the several statements in *The Minnesota Mortgage Moratorium Case*, to the effect the law there scrutinized did not impair the obligations of a contract, but only postponed the remedy to enforce it, have no bearing in passing on the constitutionality of a Federal law on the subject of bankruptcies.

THE ENRICHMENT OF DEBTORS

Counsel for the lienholder claims that the Frazier-

Lemke Act "attempts to enrich debtors at the expense of their creditors."

In passing on a law against the objection, it violates the Fifth Amendment, the Court is not concerned with what a law "attempts" to do, but is concerned only with what is actually done under the law directly affecting the property of the person complaining.

> "We have no power, *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. It amounts to little more than the negative power to disregard an unconstitutional enactment, which otherwise would stand in the enforcement of a private right. The party who invokes the power must be able to show not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally. If a case for preventive relief be presented the Court enjoins in effect, not the execution of the statute, but the acts of the official, the statute notwithstanding."
>
> *Massachusettes* v. *Mellon*, 262 U. S. 447, 488.
> *City of Allegan* v. *Consumers' Power Co.*, 71 Fed. (2) 477, 481.

Under the Act now being questioned, Radford may buy his farm from the trustee in bankruptcy by paying therefor the fair and reasonable value thereof, as fixed by two successive judicial decrees. The lienholder has the right to introduce evidence before the referee of the value of the property. He has the right on appeal

to have such evidence reviewed by a District Court, then by a Circuit Court of Appeals, all subject to a certiorari which may be issued by this Court.

How does this enrich a debtor "at the expense of his creditors"?

REFINANCING RADFORD'S INDEBTEDNESS

The lienholder in the proceeding at bar claims that the lienholder called the attention of Radford to the Emergency Farm Mortgage Act of 1933 "and urged him to apply to the Federal Land Bank and Land Bank Commissioner for loans with which to refinance his indebtedness. Radford refused to do so."

In the brief filed in the District Court, the normal market value of Radford's farm was stated at $6700. Seventy-five per cent of this, the amount which the Federal Land Bank and the Land Bank Commissioner was empowered to loan on farms, is $5025. There is no evidence that such a loan would have been granted, if application therefor had been made, nor that the lienholder would have accepted $5025 in discharge of Redford's debt to it.

But under the terms of the Frazier-Lemke Act, Radford is not required to refinance his indebtedness at perhaps an excessive amount, but may have the value of his property fixed by a decree of court and repurchase it at the value so fixed.

THE BLAISDELL CASE

Counsel for the lienholder seek to nullify The Minnesota Mortgage Moratorium Act as to this case, on several grounds, none of which are well taken.

True, the Minnesota statute under review in The Minnesota Mortgage Moratorium Case, also known as

The Blaisdell Case, 290 U. S. 398, "did not impair the integrity of the mortgage indebtedness, either principal or interest."

But the Court in the case just cited was considering the statute of a State which could not constitutionally impair the obligation of a contract, a power nevertheless conceded to Congress in the enactment of a law upon the subject of bankruptcies. (186 U. S. 186)

Again, as to whether or not the relief granted by the Minnesota statute "was limited to the existence of an actual emergency," the exercise of a power is always referable to the authority which authorizes its exercise. This Court has the power to terminate the enforcement of the statute when the conditions of which it is predicated no longer exist. (Rec., p. 110; 290 U. S. 442)

THE RIGHTS OF THE BANK

Counsel for the lienholder contended in the District Court, inasmuch as "Radford cannot pay his debt," that the Bank is entitled to immediate ownership and possession of the mortgaged farm."

This pronunciamento overlooks the essential fact, that the bank "is entitled" to such rights as the law gives it, and no more.

As to the right of the Bank, to sell and convert it (Radford's farm) into cash, this Court has upheld a moratorium as to such rights as valid.

The Minnesota Mortgage Moratorium Case, 290 U. S. 398.

As "to the right (of the bank) to rent it (the farm) at such price as it sees fit", consult District of Columbia Rent Case:

As to the right of the lienholder to see that the farm "is properly cultivated, to prevent the improvements from deteriorating," these rights are preserved to the lienholder by the official supervision of the farming operations of the debtor. (Note, *Radford as a Tenant, infra.*)

As to the alleged right of the lienholder "to a possible enhancement in value from the currency inflation which many careful observers think inevitable," the Frazier-Lemke Act gives the lienholder the right to a second appraisement at any time during the moratorium.

RADFORD AS A TENANT

The lienholder in the proceeding at bar claims that Radford has been derelict as an owner; hence, may not be a good tenant.

Section 75, National Bankruptcy Law, subdivision (b), contemplates supervision "over the farming operations of a farmer."

Under subdivision (j), the terms of a composition or extension proposal "may provide for supervisory or other control by the conciliation commissioner over the farmer's affairs during such period."

> Subdivision (l): "Upon the confirmation of an extension proposal, the court may * * * retain jurisdiction of the farmer and his property during the period of the extension in order to protect and preserve the estate."
>
> Subdivision (n): "The filing of a petition pleading for relief under this section shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court."

So that when Radford's tenancy in the proceeding at bar, begins, ample power is possessed by the court either to see that Radford is a good tenant or to cancel his lease if he is not, for subdivision (s) provides: "If the debtor fails to comply with the provisions of this subsection, the court may order the trustee to sell the property as provided in this Act." And the provisions of this subsection," includes the payment of a "reasonable rental annually," and which rental may be predicated of good husbandry on the part of the tenant.

The foregoing observations dispose of the contention made in the District Court, that the Frazier-Lemke Act allowed the debtor to "use or misuse" his mortgaged property during the moratorium.

VIOLATION OF AGREEMENTS

In the District Court, counsel for the lienholder claimed that "Radford's present effort to * * * retain possession of the mortgaged farm for five years is a direct violation of his agreements."

What are "his agreements" as applied to Radford:

(1) The obligation of Radford to pay his mortgage indebtedness is impaired by National Bankruptcy Act, and this is permissible. (186 U. S. 186.)

(2) The answer of the lienholder does not plead that Radford agreed in writing (as required by the laws of Kentucky, 2 Kentucky Digest, West Publishing Co., col. 3711, sec. 34), to execute a deed to the property, nor did the lienholder bring a suit for specific performance of the alleged contract, but on the contrary sought to foreclose its mortgage. (Rec., p. 49); consult Assignment of Error, No. 19, Rec., p. 96.)

REDUCTION OF DEBT

In the brief filed in the District Court, counsel for the lienholder claimed that Section 75, National Bankruptcy Law, as approved March 3, 1933, and as amended June 28, 1934, provided, with respect to a debtor: "His debts shall be reduced to the 'fair and reasonable value, not necessarily the market value' of his property." But this is true of all laws on the subject of bankruptcies. A debtor's property to the extent of its value (and that is all there is worth while of property), is applied to the payment of his debts, and the debtor is discharged from the obligation of the unpaid balance due on his debts.

National Bankruptcy Law, Sec. 17.

Counsel for the lienholder contended in the District Court:

(a) "Not only are creditor's debts partially cancelled,

(b) "They are not allowed to collect the part not cancelled for five years."

As to (a), the partial cancellation of a debt results from applying the proceeds of the sale of the security to the payment of the debt, a well and long established practice in the law of bankruptcies.

As to (b), If a debtor have property of which he does not elect to retain possession under the Frazier-Lemke Act, then such property is immediately sold and administered.

THE APPRAISEMENT

The Frazier-Lemke Act requires the property of

the debtor to be appraised "at its then fair and reasonable value, not necessarily the market value, at the time of such appraisal" (Par. 1.)

It is evident that Congress did not here use the term "market value" in its accurate legal sense, that is a value derived from a sale made by one willing but not compelled to sell, to one willing and able, but not compelled to buy. (5 *Words and Phrases*, 1st Ed., pp. 4382 *et seq*), but rather in the sense of the value which might have been derived from a forced sale.

In the case at bar, the appraisers by an amended report approved by the District Court (Rec., p. 86), fixed the fair and reasonable value of the land on which the lienholder in the proceeding at bar has a mortgage, also separately the market value of such property, at $4,445.00 (Rec., pp. 86, 87.)

The lienholder at the hearing had before the Referee in Bankruptcy in this case in which the Referee determined the rental value of the mortgaged property and considered the report of the appraisers herein, the lienholder was offered an opportunity to introduce evidence as to the rental and the market value of the property mortgaged" (Rec., p. 99.)

The District Court had the power to permit the appraisers to file an amended report. The allowance of amendments in pleadings and other papers is to prevent mere modes and forms from prevailing over the intrinsic merits of the litigants.

Roach v. Hastings, 16 Pet. 319.
28 *United States Code, Annotated*, Sec. 777, note.

In the brief filed in the District Court, the counsel for the lienholder in the proceeding at bar, contended with respect to Section 75, as originally approved, and

as thereafter amended: "They (the two enactments) seek to coerce secured creditors into scaling down their debts:

(a) "to the so-called 'fair and reasonable value' of their security as fixed by appraisers more than likely friendly to the debtor and hostile to the creditor,

(b) "irrespective of whether or not that 'fair and reasonable value' is equal to the market value of their security."

As to the personnel of the appraisers, the record recites:

"It appearing that L. J. Harris, one of the appraisers appointed by the Court is Master Commissioner of Christian Circuit Court, that Fred Jackson, one of the appraisers, is County Tax Commissioner of Christian County * * *, and that Lucian Manely, one of the appraisers, is a farmer in Christian County." (Rec., p. 72.)

Each of these appraisers were declared to be "familiar with the value of real estate" in the county where the land in question is situate.

No objection was made in the District Court to the personnel of the appraisers. No evidence was offered by the lienholders as to the value of the property appraised by them.

As to (b), ante: The appraisers fixed "the fair and reasonable value" of the property in controversy to be the market value thereof. (Rec., p. 87.)

Complaint was made in the District Court that the lienholder has "no voice" in the appraisal." It is difficult to understand this point. The referee appoints the appraisers. No reason is perceived why a lienholder may not object to the personnel thereof. The lienholder

may introduce before the referee evidence as to the value of the property.

What greater voice has any litigant in any judicial proceeding?

As to an appeal in case of the appraisement of personal property:

(a) The lienholder in the case at bar has no lien on any personal property.

(b) Under National Bankruptcy Law, Section 24 (b), (c), as amended May 27, 1926, an appeal may be taken from an appraisement of personal property. This appeal is to be taken in thirty days. The Frazier Lemke Act simply gives one year in which to appeal in case of an appraisement of real estate, and does not affect an appeal from an appraisement of personalty.

In the statement of facts in the Circuit Court of Appeals, counsel for the lienholder stated: "The appraisers fixed 'the fair and reasonable value' of the mortgaged property at $4,445.00." The appraisers also fixed the market value of the property at the same amount. (Rec., p. 87.)

In the Circuit Court of Appeals, counsel for the lien holder contended: "Creditors cannot protect themselves against inadequate appraisals when they and the public generally are prohibited from bidding for the property." Again: "Congress gave the debtor alone an option to purchase the property at the appraised price irrespective of how much higher price others were willing to pay. To sell to the debtor at the low appraised price when others are willing to pay more, simply confiscated a portion of the lien creditor's claim."

Neither the lienholder nor the public generally "are prohibited from bidding for the property." If the public generally in good faith does so bid, to be paid in

cash, that is an evidential element to be considered in fixing the value of the property.

For the lienholder to attempt to bid the amount of a debt which as to the difference between the value of the land and the amount of his debt is practically worthless, is but paltering with the situation.

Counsel for the lienholder in the Circuit Court of Appeals said:

"It is certainly unreasonable to allow local appraisers (probably friendly with the debtor), to fix a so called 'fair and reasonable value' with no reference to the market value."

As to this: The market value and the fair and reasonable value of the property was fixed by the appraisers, with the approval of the Court, at the identical amount. (Rec., pp. 86,87.) As to whether such appraisers were "probably friendly with the debtor," no evidence was offered nor contention made before the referee. (Rec., p. 72.)

As to being "local appraisers," the lienholder did not request the appointment of non resident appraisers, nor offer independent evidence of the value of the land.

IMPEDIMENTS

In the District Court, counsel for the lienholder in the proceeding at bar, said of Section 75, as originally approved, and as later amended: "They throw every possible impediment in the way of a creditor seeking to enforce his just rights."

What are the impediments thus assailed? No specification of this allegation is attempted by counsel.

A creditor receives a reasonable rental and the reasonable value of his security. What more can he ask?

PARAGRAPH 3, FRAZIER-LEMKE ACT

In the District Court, counsel for the lienholder in the proceeding at bar, denounced paragraph 3, Frazier Lemke Act, as "confiscation." Inasmuch as that paragraph operates only with the consent of the lienholder, and inasmuch in the proceeding at bar the debtor was not accorded any relief under paragraph 3, such comment has become moot.

"ROBBERY"

In the brief filed in the District Court, the counsel for the lienholder in the proceeding at bar, characterized paragraph 7 of the Frazier-Lemke Act in this wise:

"This is not bankruptcy but robbery."

This statement in this form was eliminated in the brief filed in the Circuit Court of Appeals. But counsel in that court cited *Loan Association v. Topeka*, 20 Wall. 655, 662, 664, (and italicized the quotation):

> "*To lay with one hand the power of the government on the property of the citizen, and with the other to bestow it upon favored individuals to aid private enterprises, is none the less robbery because it is done under the forms of law and is called taxation.*"

Counsel for the lienholder, in the proceeding under review, by this court, claim that the lienholder is being deprived of its property without due process of law as a result of the Frazier-Lemke Act, in violation of the Fifth Amendment of the Constitution of the United States. Counsel are so earnest in this contention that at times they seem to believe that Louisville Joint Stock Land Bank is the owner in fee simple absolute of the property in controversy herein; that the debtor Radford is a stranger to the title; and that Congress by legis-

lative edict has taken the property of the Bank and given it to Radford without exacting any conditions to be performed on the part of the said Radford. In working out this theory they sometimes assume that the Fifth Amendment reads: "No man shall be deprived of his property" and omit the qualification: "without due process of law." Transposed, however, the Constitution reads, in effect: A man may be deprived of his property by due process of law.

Let us analyze the legal status of the respective rights of the lienholder and the debtor in the case at bar. At the outset, prior to the execution of the mortgage we shall assume that Radford had a fee simple title to the property described in the mortgages executed by Radford to the lienholder. There is no express showing as to the fact just stated in the record in this case. But this fact stands practically admitted, for if Radford did not own the property, then the lienholder in this proceeding did not acquire any title to the land under its mortgage, and has no property interest in the land of which it may be said, it is being deprived.

Radford then as the owner of the land, executed two mortgages to the lienholder. These mortgages did not make the lienholder the owner of the land.

In Kentucky, a mortgagee is merely the holder of a lien on the property mortgaged.

Douglass v. Cline, 75 Ky., 12 Bush, 608, 621.
Wagley v. Holt, 77 Ky., 14 Bush, 788, 791.

And enforceable only by a suit in equity.

Ins. Co. v. Cheatham, 221 Ky. 668.

A suit to enforce a lien in a Federal Court is to be regarded as a suit in equity.

Armstrong Cork Co. v. Merchants' Ref. Co., 184 Fed. 199, 202.

"Bankruptcy proceedings are a branch of equity jurisprudence."

1 *Remington on Bankruptcy* (4 Ed.), p. 51, Sec. 23.
1 *Collier on Bankruptcy* (13 Ed.), p. 39.

"The decree of a chancellor is always a matter of grace and never the absolute right of a litigant. The propriety of affording equitable relief rests in the sound discretion of the court, to be exercised according to the circumstances and exigencies of each particular case."

21 *Corpus Juris*, p. 34, Sec. 12.

At common law, the title to the land mortgaged passed to the creditor, "subject to the condition of being defeated, and the title of the debtor may be resumed, on his discharging the debt at the day limited for its payment; and if he did not, the land was lost, and became dead to him forever."

4 *Kent Commentaries*, * p. 137.

At common law, "upon the execution of a mortgage, the legal estate rests in the mortgagee, subject to be defeated upon performance of the condition" (4 *Kent*, * 154).

At common law, a mortgagee may bring ejectment against a mortgagor (4 *Kent*, * 155).

The learned commentator continues:

"In ascending to the view of a mortgage in the contemplation of a court of equity, we leave all these technical scruples and difficulties behind us. * * * the narrow and precarious character of the

> mortgagor at law is changed, under the more enlarged and liberal jurisdiction of the courts of equity. * * * the case of mortgages is one of the most splendid instances in the history of our jurisprudence, of the triumph of equitable principles over technical rules, and of the homage which those principles have received by their adoption in the courts of law. Without any prophetic anticipation, we may well say, that 'returning justice lifts aloft her scale'" (4 *Kent*, * 159).

So that it clearly appears in modern jurisprudence, a mortgagee never had an absolute right to foreclose a mortgage. His right was to appeal to a court of equity, which grants relief as an act of grace, and not as an act of right (221 Ky. 672, *et seq.*).

1 *Jones on Mortgages* (2d Ed.), Section 4, in speaking of a common mortgage, made the statement that in the time of Littleton, the mortgage "had then become a conditional estate; the condition being that upon payment of the debt at a fixed time, the grantor might reenter, but upon breach of the condition, the conveyance became absolute. It was at a later day that the equitable right of redemption after forfeiture became an incident of the mortgage."

The equitable right of redemption is a creature of equity jurisprudence (1 *Jones on Mortgages*, 2d Ed. Sections 6, *et seq.*).

A mortgage at common law was a conveyance of the legal estate by A, the mortgagor, to B, the mortgagee, subject to the condition that if, on a prescribed day A paid B a sum of money, the legal estate immediately revested in A. If, however, A allowed the pay day to pass without tendering the amount due, B's estate became absolute, and all right of A's to recover the land was entirely forfeited. The harshness of this result caused equity to interfere, about three centuries ago, with its

characteristic invention, the Equity of Redemption. Equity gave A the right, enforceable by suit, to pay the amount due at a later date than the prescribed day, and on such payment compelled B to deed back the land to A. This right came to be regarded as creating in A the substantial interest in the land, and equitable estate also called the equity of redemption, which passed on A's death to his heirs. The equity courts, however, scrupulously recognized, in form, the legal right of B, the mortgagee, growing out of his ownership of the legal estate, to the possession of the property. B, therefore, was entitled to take possession of the land and to receive the rents and profits as soon as the mortgage was executed (unless the right to possession was reserved to A in the instrument), or at any other time until the land was redeemed by payment of the debt; and equity would not interfere with his possession. Furthermore, B, as the party entitled to possession, was the only one who could recover the land from a third person. Equity, however, regarding the mortgagor's right as the substantial interest in the land, and B, the mortgagee, as holding his legal estate merely as security for the debt, compelled B when in possession to account for the rents and profits which he received, and to apply them in part payment of the interest on and the principal of the mortgage debt. B, therefore, might extinguish the debt, little by little, by going into possession. He was not limited to this method, however. He might, after the debt was due, bring a suit for foreclosure of—i. e., for cutting off or putting an end to—equity of redemption. In such a suit the court, after ascertaining what was due to the mortgagee, gave the mortgagor a limited time—say six months—in which to make payment: and decreed that in default of such

payment A's equity of redemption should be at an end. This sort of foreclosure practically consisted in removing from B's legal estate the cloud created by A's equity of redemption. 7. *Modern American Law, Mortgages*, sec. 148, also see: *Pomeroy, Equity Jurisprudence*, §§ 1179-1185.

Consult, 10 *Ruling Case Law*, pp. 242, 243, sec's. 3, 4; pp. 500, 501, 502, sec's. 296, 297.

Not long after the courts of equity invented the equity of redemption, they were called upon to defend it by the further rule that the mortgagor cannot, when he executes the instrument, bargain away, either wholly or partially, his right of redemption. Thus, if A, the mortgagor, stipulates in the mortgage that he shall have no right to redeem after the pay day; or that his heirs may redeem but his assigns may not; or that the mortgagee may have the option to buy an absolute title on payment of a bonus and thus cut off the equity of redemption; all such stipulations limiting the right of redemption are wholly void. The reason is plain; if such stipulations were permitted to have effect, they would come into common use, and thus the entire system of equity mortgage law would in practice be destroyed and the mediaeval common law system restored in full vigor. This doctrine is expressed in the sentence, "Once a mortgage, always a mortgage." The wording of this maxim is somewhat misleading; in place of "always," it were better to read, "in all respects" a mortgage. For, on the other hand, it is quite legitimate for the mortgagor, by an independent transaction, after the mortgage is executed, to sell his equity of redemption to the mortgagee. Such a sale, however, will be closely scrutinized by a court of equity and will not be permitted to stand unless it is perfectly fair; since the

mortgagee, while not in a strict fiduciary relation with the mortgagor, is in a position to take advantage of his necessities and to exert undue pressure upon him.

7 *Modern American Law*, "*Mortgages*," sec. 155.

BANK'S OFFER TO BUY

The record discloses that at the hearing before the referee the, lienholder offered to pay "in cash" for the property the amount of its mortgage debt. (Rec., p. 71) This amounted to over $8,000. The highest value placed by the lienholder upon the property before the incident mentioned was $6700.

The record also discloses (without contradiction):

> "And thereupon the counsel for the bankrupt admitted that Louisville Joint Stock Land Bank has a valid lien on the mortgaged property for the amount offered to be paid in cash, and that under the law all money would be immediately returned in satisfaction of its mortgage debt, if such offer be accepted." (Rec., p. 72.)

On appeal to the District Court, the lienholder "offered and hereby offers to pay for said property the full amount of its aforesaid mortgage indebtedness thereupon." (Rec., p. 84.)

In the assignment of errors in the Circuit Court of Appeals (Rec., p. 89), no mention is made of this incident.

The Circuit Court of Appeals treated the incident related "as of course beside the point." (Rec., p. 110.) Otherwise the law would have been nullified by judicial construction.

In the Circuit Court of Appeals counsel for lienholder contended:

> "To say that a lien creditor has a general claim for the difference between the appraised price and the amount of his debt means nothing because the lien creditor will realize next to nothing on such a claim."

This contention reveals the fallacy of the lienholder's contention that it was offering to pay more for the land than the appraised value thereof.

THE GAMBLING DEVICE

Counsel for the lienholder contended in the Circuit Court of Appeals:

> "A five-year delay in selling the debtor's property is not a reasonable delay. This delay is not for the purpose of realizing more from the property for creditors but allows the debtor to gamble at his creditors' expense on the value of the property increasing. The delay is not limited to the existence of an actual emergency, but is a rigid, inflexible delay granted irrespective of changing circumstances."

What does Radford obtain in the circumstances disclosed in this proceeding of which a reasonable minded man would have a right to complain?

(a) Radford in 1924 owned a farm then worth $18,000.

(b) Radford in 1922 and 1924 borrowed in all $9,000 from the lienholder.

(c) On March 1, 1932, and September 1, 1932, Radford had reduced the amount of his two mortgages to $7063.43, plus $891.21 respectively. That is, he had paid on the principal of his debts, the difference between the principal thereof, $9,000, and the unpaid

balance of $7,054.04 (that is $7,053.43 plus $801.21), or $1045.38 paid by Radford on the principal of his debt.

It also appears from the amortization table that Radford paid interest from September 1, 1932, to March 1, 1933, 18 payments in all, totaling $4266.43. One-sixth of this, or $711.07, inured to the benefit of the land bank, for that bank had issued in turn its bonds on a five percent basis. (See Record, p. 17).

On the $1000 note, Radford paid principal $108.79, plus interest $487.22. One-sixth of $487.72 is $81.28. So the bank, having benefited by its transaction with Radford to the extent of $717.07 plus $81.28, a total of $792.35, is asked by law to indulge Radford for six months (½ of $325 or $162.50).

That is the bank, having profited $792.35, is asked to yield any twenty percent of that amount to Radford —and here are the epithets used to characterize such legislation:

Robbery	***Arbitrariness***
Confiscation	***Depriving property without due process of law.***
Repudiation	
Unreasonableness	

It is self-evident that whether or not the mortgage lien held by the lienholder on the property of the debtor constitutes property within the protection of the Fifth Amendment depends on the fact as to whether or not such lien has any tangible or substantial value. A court in upholding the Fifth Amendment deals with substantial controversies and not with theoretical contentions.

The value of the mortgage held by the lienholder on the property of the debtor is resolvable into two elements. As a secured creditor, the value of the lien held by the bank depends on the value of the securities.

This value was ascertained by a judicial decree, rendered at a hearing of which the lienholder had due notice, was present and was afforded an opportunity to introduce evidence (Rec., p. 99.) If this value rises within five years, paragraph 7 of subdivision 4 of section 75, of the Frazier-Lemke Act gives the lienholder the right to a revaluation of the property and the privilege of demanding the higher valuation.

So, as to that part of its property which is represented by the value of the lien which the lienholder holds upon the property of Radford, the lienholder is not being deprived of any portion thereof.

The lienholder cannot complain that it was deprived of competitive bidding in fixing the value of the land on which it holds a lien. Certainly, at the time the referee was engaged in the judicial function of determining the value of the land on which the lien existed, the lienholder had the right to offer evidence of a bona fide cash bid by anybody who was desirous of buying the property. No such evidence was offered. Instead, the bank indulged in the idle gesture of offering in form a sum of money for the property, and which sum would have been immediately repaid to the bank by the trustee in bankruptcy. In fact, it may be assumed that the checks of the parties respectively, would have cleared, the one against the other. Neither the referee nor Judge Dawson, nor the Circuit Court of Appeals, nor it is submitted, will this Court, regard such an effort to nullify the Frazier-Lemke Act, as having any operative force or effect. Such a ruling at the hands of this Court, would in effect be a judicial repeal of a legislative enactment.

As to that portion of the debt of the lienholder which is represented by the difference between the

value of the land and the amount of the lien, the lienholder becomes a general creditor and is entitled to share in the unencumbered assets of the debtor. If these assets are not sufficient for that purpose, the loss of the lienholder "is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor." (Rec., p. 110.)

PUBLIC SALE

Counsel for the lienholder contended in the Circuit Court of Appeals: "Heretofore in enforcing liens in foreclosure and bankruptcy proceedings, it has been deemed essential to sell the property to the highest bidder."

"Heretofore" it has been deemed essential that the Supreme Court meet in the Capitol. Does that prevent the Court from meeting in the new building being prepared for its occupancy?

> "The novelty of a provision is no demonstration of its invalidity." (Rec., pp. 106, 107.)
>
> *In re Bradford* (D. C. Md.), 7 Fed. Supp. 665, 674.
>
> *In re Landquist* (7 C. C. A.), 70 Fed. (2d) 929, 932, 933.

Again we are told: "Secured debts and valid preferences have heretofore only been affected by bankruptcy laws where the interests of general creditors so demanded." As already shown, Congress is not limited in the exercise of its legislative power by what has been heretofore done. If that were true, the law of the repeal or amendment of statutes would cease to be operative. Counsel for the lienholder also contended in the Circuit Court of Appeals:

"Public sale is necessary to foreclosure."

Counsel are here discussing a sale under the decree of a court of equity. But under section 70 (b), National Bankruptcy Act, the property of an estate may be sold at private sale.

> 6 *Remington on Bankruptcy* (4th Ed.), p. 26, sec. 2549.

"The bankrupt may be a bidder at a sale of his assets.

> *Ib.*, p. 39, sec. 2559.

Again we are reminded that requirements as to methods of sale are not constitutional in their nature. As early as the time of Henry VIII, it was provided after authorizing a sale, the Court, as to the property of the bankrupt, might "otherwise * * * order the same for true satisfaction and payment of the said creditors." (1 *Remington on Bankruptcy*, 4th Ed., p. 6.)

RADFORD'S OIL WELL (?)

Counsel for the lienholder indulged in a fantasy in the District Court, which we term Radford's Oil Well(?). To do the subject justice, we quote from their brief in the District Court:

> "Suppose that Radford owned an *unencumbered farm* in addition to this *mortgaged farm*, that four years from now *oil is discovered on the unincumbered farm* and Radford becomes very rich, but the value of the mortgaged farm (now much less than the Bank's debt) does not increase.
>
> "Under the Frazier-Lemke Act, Radford at the end of five years, irrespective of his then worth, can be relieved of his debt and absolutely regain all his property by paying (1) the so-called fair value of the mortgaged farm plus (2) a possible

> ratable share of the *original* appraised value of the unencumbered farm. There is no provision for re-appraisal of any property save that real estate subject to a lien."

As to this last sentence, consult Judge Dawson's opinion. (Rec., p. 63.)

The point was not restated in the Circuit Court of Appeals. But:

(a) Radford does not own an unencumbered farm.

(b) In passing on objections arising under the Fifth Amendment, this Court does not pass on imaginary or improbable possibilities.

THE POLICE POWER OF THE FEDERAL GOVERNMENT.

Counsel for the lienholder contended in the District Court: "The Federal government has no reserved police power * * *." Technically, this is true. The Federal Government, being a government of delegated powers, has no reserved power of any sort.

But when necessary to exert the police power in the exercise of a delegated power, the police power of the Federal Government as to the delegated power is plenary.

> 'The police power is a general term used to express the particular right of a government which is inherent in every sovereignty."
>
> *Lake Shore, etc., Ry. Co.* v. *Smith*, 173 U. S. 684, 689.
> *Freund, Police Power*, p. 62, sec's 62 *et seq.*

> "* * * it is now equally well settled that the United States does possess what is analogous to the police power, which every nation possesses

* * * to carry into effect those powers which the Constitution has conferred upon it."

United States v. *Shauver*, 214 Fed. 154, 156, and *cas. cit.*

THE AGRICULTURAL EMERGENCY

In the District Court, counsel for the lienholder contended: "In fact if the Farm Credit Administration's definition of normalcy and emergency be accepted there is no present agricultural emergency."

This statement was not repeated in the Circuit Court of Appeals. *But subsequently, in this brief, not having as yet received a copy of petitioners, we submit data with respect thereto.* As to Radford:

(a) A farm once valued at $18,000 is appraised at $4,550.

(b) The annual rental of a farm of which the carrying charges are $730, is fixed by the Court at $325.

(c) The lienholder in the case at bar is seeking to foreclose its mortgage and produces no one who is willing to refinance Radford's mortgage.

What greater emergency can there be as to Radford?

Worthen v. Thomas, 54 Sup. Ct. 816, 292 U. S. 426, as to the inability of a State to impair the obligation of a contract, has no bearing upon an act of Congress, for Congress is not subject to such limitation. (186 U. S. 186.)

DENUNCIATIONS OF THE FRAZIER-LEMKE ACT.

In the District Court, the counsel for the lienholder indulged in the following denunciatory language:

"The Frazier-Lemke Act is a vicious piece of

confiscatory class legislation. It is dishonest legislation. It places governmental approval upon, and encourages debtors to *repudiate* their just obligations. It *undermines confidence* and will prove a boomerang to those for whose benefit it was passed. It was pointed out in Congress that it will *destroy private farm credit.* Only then, in an effort to avoid its natural consequences, was the *proviso* inserted limiting its applicability to debts existing on June 28, 1934. But few are those who will not realize that later Congresses may have just as little regard for the sanctity of contracts and that good faith which should be enforced between man and man as did the Seventy-third Congress when it enacted the Frazier-Lemke Act. If the Seventy-third Congress can cancel past debts future Congresses can and will do the same, unless courts halt the present tendency toward overriding private liberty and rights, and cause the people to stop and think and turn to the course of honor and integrity.

"Schemes such as those now prevalent are no new things. They have been tried in all ages, and have always resulted in disaster."

Slightly modified, this language was repeated in the brief filed in the Circuit Court of Appeals.

This Court does not sit in judgment upon the wisdom, integrity or motives of the Congress.

Consult, 4 Federal Digest (West Pub. Co.), p. 3635, Key number 70 (3).

Smith v. Kansas City Title & Trust Co., 255 U. S. 180, 210.

OGDEN v. SAUNDERS.

Ogden v. Saunders, 12 Wheat. 213, 354, was cited in the Circuit Court of Appeals by counsel for the lienholder to the effect a creditor is entitled to a hearing on an application for a discharge filed by a bankrupt.

Nothing in the Frazier-Lemke Act dispenses with

such a hearing. The Act provides that upon complying with its provisions, the debtor may apply for his discharge as "provided for in this Act," that is, National Bankruptcy Act, under which creditors are entitled to notice of "all hearings upon application for * * * the discharge of bankrupt." ,(Sec. 58). Consult, also, sec. 14 (b).

ALEXANDER HAMILTON

Alexander Hamilton, whom counsel for the lienholder so highly and so justly, extol, signed the Constitution under which this Court has decided *Sturges* v. *Crowninshield, Hanover National Bank* v. *Moyses,* and *The Gold Cases.* And mentioned "agriculture," first, as one of the chief concerns of this government.

EXPARTE MILLIGAN

Ex parte Milligan was cited in the Circuit Court of Appeals by the counsel for the lienholder. No one is contending in the proceeding at bar that the Constitution is not omnipresent, or not continuous in its operation, or that the operation theref has been suspended.

RELIEF

In the Circuit Curt of Appeals counsel for the lienholder contended:

> "The Frazier-Lemke Act was enacted for the purpose of relieving farmer-debtors from their debts."

This may be admitted. Indeed we may go further and concede such is the purpose of all laws on the subject of bankruptcies.

In re Reiman, Fed. Cas. 11, 673 (p. 493), affirmed, Fed. Cas. 11,675, quoted Mr. Justice Story's description of a law on the subject of bankruptcies:

> "* * * is a law for the benefit and relief of creditors and their debtors, in cases in which the latter are unable or unwilling to pay their debts."

Consult, 70 Fed. (2d), 931, Rec., p. 107.

Hanover National Bank v. *Moyses* 186 U. S. 186, sustained a law on the subject of bankruptcies which gave a debtor relief from his debts.

In 1 *Remington on Bankruptcy*, (3d Ed.), p. 15, it is said of the Bankruptcy Act of 1841: "It was the first American law that wholly abandoned the original idea that a bankruptcy law was a law only to be invoked by creditors."

Consult, *In re Klein*, 1 How. 265, 277 (note.)

Centuries ago, chancellors discovered a relief for debtors in the right of redemption from a sale under mortgage.

> "The subject of bankruptcies comprehends every phase of the relations between an insolvent or non-paying or fraudulent debtor and his creditors, extending to his or their relief." (Rec., p. 107.)

Louisville Joint Stock Land Bank, in its answer to the amended petition in bankruptcy herein of the debtor, prayed that "it be given all other proper relief." (Rec., p. 49.)

A proceeding in bankruptcy is governed by the principles of equity.

1 *Remington on Bankruptcy* (4 Ed.), sec. 23, p. 51.

He who asks equity must do equity.

21 *Corpus Juris*, p. 172, sec. 151.

AVOIDING ADJUDICATION

Counsel for the lienholder complained in the Circuit Court of Appeals:

> "The fact that a farmer seeks a composition under section 75, instead of section 12, indicates he intends to avoid an adjudication in bankruptcy."

What of it? What provision of the Constitution demands that a farmer be adjudicated a bankrupt?

Under section 12, as amended June 25, 1910, a debtor may offer terms of composition without being adjudicated a bankrupt. In this respect, no difference exists between the two sections, 12 and 75.

As to a composition in bankruptcy without an adjudication:

7 *Remington on Bankruptcy* (4 Ed.), sec. 3069.

DISCRIMINATION AS TO CREDITORS

Counsel for the lienholder contended in the Circuit Court of Appeals

> "To have the general creditors fate depend upon the decision of secured creditors is capricious legislation."

How may a secured creditor claim that legislation which permits him to control the operation of paragraph 3 of the Frazier-Lemke Act deprives it of its property without due process of law?

EXEMPT PROPERTY

Counsel for lienholder contended in the Circuit Court of Appeals:

It is argued by learned counsel for lienholders that as to exempt property thus set aside, neither paragraph 3, nor paragraph 7 of the Act are operative.

But that question cannot be raised by a lienholder as impairing the validity of the Act. Such contention is purely a question of statutory interpretation not present in the proceeding at bar, because no real property was set apart as exempt.

The theory of counsel is that under a literal interpretation of the Frazier-Lemke Act:

(1) Exemptions are to be set aside as provided in paragraph 2 of the Act.

(2) Paragraphs 3 and 7 are not operative as to property set apart as exempt.

Hence, the law is unconstitutional.

But, (1) as already stated, in the proceeding at bar, no realty was set apart as exempt. (2) The constitutional requirement as to the equal protection of the law applies only to the action of a State.

Re Virginia, 100 U. S. 313, 319.

(3) A lienholder, whose lien is single and entire, cannot complain that as to a part of his security the law is more favorable to him than it is as to another part thereof. Such a result, if allowable, enures to the benefit of the lienholder and to the prejudice of the debtor.

DELAYING CREDITORS

Counsel for the lienholder said of the five years' moratorium authorized by the Frazier-Lemke Act: "This delay is not for the purpose of realizing more for the property *for creditors.*" (as if the creditors were the only persons to be considered), "but allows

the debtor " (what a horrible thing to do in a government of laws and not of men), "to gamble at his creditor's expense" (how can that be in view of the reappraisement privilege accorded the creditor), "on the value of the property increasing."

We pause to ask:

Q. Whose property has decreased in value? A, Radford's.

Q. Whose property may increase in value? A. Radford's.

Q. Who is Radford in the eyes of the law? A. A person.

Q. Whom does the Fifth Amendment protect? A. "Any person."

Q. For whose benefit did the Chancellor discover, centuries ago, the equity of redemption? A. The benefit of the debtor.

And so on ad infinitum.

Let us record another complaint of the lienholder:

> "The delay is not limited to the existence of an actual emergency" (to Radford the emergency resulting in the loss of his farm seems very actual), "but is a rigid, inflexible delay granted irrespective" (counsel doubtless meant to use an adverb, "irrespectively") of "changing circumstances."

Counsel for the lienholder fail to discover that under the doctrine of *The Minnesota Mortgage Moratorium Case* (290 U. S. 398), whenever "changing circumstances" (not yet manifest) make unreasonable and arbitrary, a judicial recognition of the emergency in which Radford now finds himself, then the Frazier-Lemke Act, as to the courts will join the shades where reposes in innocuous desuetude, the law regulating rents in the District of Columbia.

Chastleton Corporation v. *Sinclair*, 264 U. S. 543, 547, 548.

As to the moratorium, counsel for lienholder complained in the Circuit Court of Appeals: "There would be no objection to renting the property for a short period" (what a wonderful concession, not made by the way, in the District Court), "if the debtor were willing to pay more rent than others would."

No evidence was offered at any time by the lienholder that any other person was willing to pay any rent at all. In the absence of such competition, the debtor must still pay "a reasonable rental annually." The debtor does not profit by the absence of competition. Why should the lienholder profit by its presence?

To say of the debtor, as did counsel for the lienholder in the Circuit Court of Appeals: "He (the debtor) can abandon it (the property) any time it becomes expedient to do so," is to overlook the essential fact that paragraph 7 of the Frazier-Lemke Act does not permit a debtor who has become a tenant to abandon the property at any time it becomes expedient to do so.

(a) The debtor becomes obligated to pay rent for five years. (Consult, Rec., pp. 79, 82,) If he fails to pay, he may be ousted just as any delinquent tenant might be, but per contra, if he became solvent, his obligation to pay rent could be enforced just as a similar obligation on the part of any tenant.

(b) It is not unusual to execute a lease with an option of purchase on the part of the tenant.

SALE TO DEBTOR

Counsel for the lienholder conceded in the Circuit Court of Appeals: "Likewise, there would be no objection to the debtor purchasing the property" (the

economic emergency, the existence of which the lienholder is apparently unconscious is resulting in a liquidation of its affairs, hence it is desirous of selling Radford's farm), "if he would pay a higher price for it than any one else would."

Who "else would * * *" pay a higher price than Radford for his farm? The record is silent on that point. Certainly such an offer would have been a cogent factor in fixing the amount of the price to be paid by Radford for the privilege of being returned "to his possession." (Lev. 25.)

THE DEBTOR'S PETITION

Counsel for the lienholder criticized section 75, National Bankruptcy Act, in this wise:

> "Any farmer (claiming to be insolvent or unable to meet his debts) may file a petition * * *"

The Act does not so provide. The petition of the farmer must state (and that under oath, National Bankruptcy Act, sec. 18 (c)), "that the farmer is insolvent or unable to pay his debts as they mature." (Sec. 75, sub. (c).)

The answer in the proceeding at bar did not take issue with this obligation on the part of Radford. (Rec., pp. 8, 9, 12, 15-50), but pleads it is willing to cancel a debt of Radford of over $8,000 by accepting a deed to a tract of land valued by it at not more than $6,700.

The District Court adjudicated Radford a bankrupt, thus sustaining the allegations of the petition.

By analogy, the requirement of section 74 requiring a court, before approving a debtor's petition as properly filed, to be satisfied that the petition "has been

filed in good faith,' is applied to a farmer's petition under section 75.

Buy why may not any debtor, no matter if solvent, be adjudicated a bankrupt?

1 *Remington on Bankruptcy* (4 Ed.), p. 104, sec. 48.

V

THE RIGHT TO REPURCHASE GIVEN TO A FARMER IN THE FRAZIER-LEMKE ACT IS AN EXEMPTION GRANTED BY CONGRESS IN THE EXERCISE OF ITS CONSTITUTIONAL POWERS ON THAT SUBJECT.

Paragraph seven of the Act of June 28, 1934, known as the Frazier-Lemke Act, the constitutional validity of which is challenged in the case at bar, is in the nature of an exemption whereby Congress granted to an insolvent debtor, the privilege, immune and exempt from the claims of his creditors, and upon the terms stated in the paragraph:

(a) To lease the property in question for a term of five years;

(b) To re-purchase the property during the lease period by paying the greater of two appraisements.

The power of Congress, in the enactment of uniform laws on the subject of bankruptcies, to grant exemptions to an insolvent debtor, and to prescribe the nature thereof, is universally recognized.

Hanover National Bank v. *Moyses*, 186 U. S. 186.

The constitutionality of Section 6, National Bankruptcy Act, relating to exemptions, has been upheld against the attack that it was not uniform in its opera-

tion, hence void; but otherwise its constitutionality has never been questioned, but on the contrary, generally recognized.

1 *Collier on Bankruptcy* (13 Ed.), pp. 277, 279, *et seq.*
3 *Remington on Bankruptcy* (3 Ed.), Sections 1270, *et seq.*

In re Smith, Fed. Cas. 12,996, Mr. Justice Woods, then a circuit judge, recognized the power of Congress to determine the exemptions which should be allowed to bankrupts.

See *Hurley* v. *Devlin*, 151 Fed.——.
In re Reiman, Fed. Cas. 11675 (per Mr. Justice Hunt).

"Creditors may pursue their State remedy against exempt property after it has been set aside to the debtor as bankruptcy jurisdiction over it then ceases."

In the case at bar, no realty was set apart as exempt. (Rec., pp. 73-75.)

Paragraph 2 of the Frazier-Lemke Act contemplates that "after the value of the debtor's property shall have been fixed by the appraisal * * * the referee shall issue an order setting aside to such debtor his exemptions * * *, subject to any existing mortgages or liens upon any such exemptions to an amount equal to the value, as fixed by the appraisal, of the value of such exempt property as is covered by any mortgage or lien * * *."

Also see opinion on this precise point, construing the Frazier-Lemke Act, by Judge Otis, (West. Dist. Mo.), rendered March 13, 1935. Brief, page 8, *et seq., infra.*

In a review in the "Kansas City Times" for Friday, March 15th, on Judge Merrill Otis's upholding the constitutionality of the Frazier-Lemke Act, is the following statement:

VI

ENGLISH BANKRUPTCY ACTS, 1788, AND PRIOR THERETO REVIEWED.

In view of the contention of the counsel for the lien holder in the District Court, that the United States of America in 1934 is limited in its enactment of uniform laws on the subject of bankruptcies to the English model prevailing in 1789, it may be well to examine more critically the provisions of such Acts.

1 *Remington on Bankruptcy* (4 Ed.), p. 6, states that the first English Bankruptcy Act was passed in 1542 (34 and 35, Henry VIII, ch. 4).

The law "was framed against debtors and no way for them, no discharge or release from debts being provided for; next that it is concerned wholly with fraudulent debtors, and not at all with those who are simply unfortunate."

"The pivotal issue, according to Judge Otis, is whether congress, which may save to the bankrupt a substantial part of his assets, may also save to him temporarily all of his assets, while giving his creditors a reasonable rental for the assets during that period and their fair value at its end. It is on this point that the Judge's opinion is particularly significant. He says:

'A negative answer to this question can be justified only upon the theory that the word "bankruptcies" as it is used in the Constitution necessarily is limited in meaning to its exemplification a century and a half ago. But none of the concepts of the Constitution is so limited. This one is not. While none of the concepts of the Constitution is so elastic that it may be distorted to defeat an end aimed at in its formulation, each is sufficiently elastic to enable its original purpose to be accomplished by varying means and methods.'

Here, stated once more, is the philosophy of constitutional law so brilliantly developed by the late Justice Oliver Wendell Holmes of the United States Supreme Court to the effect that the Constitution must be interpreted in the light of new conditions and that it must not be used, beyond the absolute compulsion of its words, to block social and economic experiments desired by the people, "even though the experiments may seem futile or even noxious to me and to those whose judgment I most respect." Since that appears to be the prevailing attitude of the United States Supreme Court today, Judge Otis may be confident that he is on strong legal ground, and has adopted a modern and enlightened view of the Constitution in applying such a theory to the new farm debt legislation."

But even that law did not require a sale of assets. After authorizing a sale, the law continued: "* * * or otherwise to order the same for true satisfaction and payment of the said creditors; that is to say, to every of the said creditors, a portion rate and rate alike, according to the quantity of said debts."

There was no discharge provided from unpaid debts. No provision was made for the payment of secured claims. Nor any provision for compositions.

In 1570, the English Bankruptcy Act was limited to traders, merchants and dealers in money (*Ib.*, p. 10). That Act (1570) "did not grant a discharge to bankrupts * * * and did not allow debtors voluntarily to go into bankruptcy." (*Ib.*, p. 11).

Until the reign of Queen Anne, "nearly two-hundred years after the first bankruptcy law of King Henry VIII, there was no provision whatsoever for discharging the bankrupt from his remaining debts."

Later a provision for a discharge was added, if the assets of the bankrupt paid a certain percentage of his debts and a certain percentage of his creditors assented thereto (*Ib.*, p. 12).

Suppose the United States in 1934 had gone back to English models in force in 1780, for a type of bankruptcy law, we would have had this result:

(1) No voluntary proceedings.

(2) No compositions.

(3) A law limited to traders, merchants and dealers in money.

(4) No provision for exemptions, payment of taxes or wages, or protection of secured claims.

(5) No reorganization of corporations in bankruptcy without a sale of assets.

A court is not justified, in order that the lienholder in this case may dispossess Radford of his farm and leave him hopelessly in debt, in thus striking down practically all of the bankruptcy laws enacted by Congress and heretofore generally regarded as constitutional.

The effect of a decision is to be considered before announcing it.

In *Home Bldg. & L. Assn.* v. *Blaisdell*, 290 U. S. 398, 443, the Court quoted Mr. Chief Justice Marshall to the effect that the Federal Constitution was "intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs," also from another case (252 U. S. 433): "The case must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago" (290 U. S. 443).

Prof. Garner (12 *Mod. Am. Law*, pp. 14, 15), says of the Federal Constitution: "* * * to hold that it has not been modified or has not expanded through custom and traditions would be to close our eyes to one of the most obvious historical facts in our Constitutional development. The fact is, if the Federal Constitution were stripped of its conventions and displayed in its legal nakedness, it would be unrecognizable and much of it would be meaningless or unworkable."

Black on Bankruptcy (3 Ed.), Sec. 4, states:

> "The first national bankruptcy act was passed in 1800 and repealed in 1803. It was modeled upon the British statute then in force, was directed against insolvent 'traders', and provided only for involuntary or compulsory proceedings."

The author then mentioned the statute enacted in 1841, and repealed in 1843, and then speaking of the Act of 1867, said:

"This act (1867), as well as that of 1841, contained provisions for voluntary bankruptcy and was primarily intended for the benefit of insolvent debtors."

Sec. 2: "Under the clause of the Federal Constitution from which the power of Congress in this behalf is derived, it is within the competence of the national legislature, untrammeled by any state laws, to enact any and all forms of legislation tending to promote the distribution of an insolvent's estate among his creditors and his discharge from their demands, provided only that its enactments are not wanting in the character of uniformity.

"In particular it has been decided that the authority of Congress over the subject of bankruptcy is not to be guaged or limited by the British statutes of bankruptcy which were in force at the time of the adoption of our constitution." (*Fed. Cas.* 11673, 11675). (Cases cited brief, 46 Law Ed., Sup. Ct., U. S., 1117; also 186 U. S. 186.)

"Nor has any success attended the argument that the Constitution contemplated only a law which would permit debtors to force an application of the debtor's property to the payment of their claims. On the contrary, the voluntary features of the bankruptcy law, allowing a debtor to present his own voluntary petition for adjudication and to obtain his discharge in the proceedings had thereon, have been amply vindicated by the decisions of the courts.

"Again, although the bankruptcy act invades and annuls vested rights, and impairs or destroys the obligation of contracts, by releasing debtors from their obligations upon a partial payment or without any payment at all, and making its provisions compulsory upon creditors, it is not for that reason unconstitutional. The provision of the Federal Constitution relating to the obligations of contracts is a limitation upon the power of the legislatures of the states only, and does not effect the authority of Congress."

"Sec. 4. The bankruptcy law is a remedial statute and should not be subjected to a narrow or illiberal interpretation; it should be construed

reasonably and according to the fact import of its terms, with a view to effect its objects and to promote justice."

See, also, *Brandenburg on Bankruptcy* (4 Ed.), pp. 1-14.

"The oppressor's hand resting heavily upon our forefathers in the old world, and causing them to migrate to new and untried fields, naturally inclined them to incorporate liberal and wise provisions for the protection of all classes in the Federal Constitution."

Brandenburg, p. 6.

A National Bankruptcy Law "is paramount and exclusive of all state insolvent laws inconsistent therewith."

Brandenburg, pp. 9, 10.

VII

CONGRESSIONAL DEBATES

Counsel for the lienholder in both the District Court and in the Circuit Court of Appeals made quotations from Congressional debates incident to the passage of the Frazier-Lemke Act.

As to the practice of this Court in such matters, consult 8 U. S. Supreme Court Digest (Lawyer's Co-op. Pub. Co., p. 5792, sec. 146.

But if the Court desires to enter upon a study of the subject just mentioned, the following references to the Congressional Record are submitted for the information of the Court in tracing the legislative history of the Frazier-Lemke Act, and in discovering the need therefor: March 13, 1933, Senator Fletcher (77 Cong. Rec. 245): "A thousand municipalities are today in default on their bonds * * *."

Consult opinion, *Thomson, Wood & Hoffman, specialists in Municipal Bond Law*, 77 Cong. Rec. 245.

March 22, 1933, Congressman Lemke, (77 Cong. Rec. 747): "There are danger signals all along the line. In my State and in numerous other states, mortgage foreclosures are now being stopped by force by enraged farmers, who are driven to desperation in defense of their homes. The law of self-preservation is in operation, a law that is greater than any law that man ever wrote, and it is time we take heed of that warning."

Congressman *Fresinger* (77 Cong. Rec. 747): "As a direct measure of relief, and it is only relief, cut down the interest rates on farm mortgages and amortize the payments. I have spoken to many farmers in my district, and this is what the average dirt farmer seems to want."

Congressman *Christianson* stated, April 12, 1933, a survey conducted by the University of Minnesota "showed that 143 farmers, a fair cross section of northwestern Minnesota, in 1932 earned no labor income." (77 Cong. Rec. 159.)

Consult *Congressman Crowe* (77 Cong. Rec. 1592).

In 1923, Minnesota established a Rural Credit Bureau. Money was loaned on 13,434 farms. Of these loans, 6,129 became delinquent and 3,190 of the delinquent loans were foreclosed (77 Cong. Rec. 1593.)

Consult Congressman *Blanton* (77 Cong. Rec. 1595.); Congressman *Church* (Cong. Rec. 1597 *et seq.*)

Congressman *Green* (77 Cong. Rec. 1599.) "Approximately 42 per cent of the farms of the United States are covered by mortgages.

Gross farm income amounted in 1919 to $17,000,000,000; in 1923 to 1929, between $11,000,000,000 and $12,-

000,000,000; in 1930 to $9,347,000,000; in 1931, $6,920,-000,000; in 1932, $5,000,000,000.

"Forced sales numbered for the year ending March 1, 1931, 26.4 per thousand farms; for the year ending March 1, 1932, 41.7 per thousand farms."

Consult *Congressman Mott,* (77 Cong. Rec. 1600); *Congressman Ford,* (77 Cong. Rec. 1603); *Congressman Deen,* (77 Cong. Rec. 1603); *Congressman Lemke,* (77 Cong. Rec. 1603); *Congressman McFarlan,* (77 Cong. Rec. 1606); *Congressman Weidman,* (77 Cong. Rec. 1607); *Congressman Arens,* (77 Cong. Rec. 1612); *Congressman McCarthy,* (77 Cong. Rec. 1613); *Congressman Focht,* (77 Cong. Rec. 1614); *Congressman Hughes,* (77 Cong. Rec. 1614); *Congressman McScod,* (77 Cong. Rec. 5514).

Note, debate *Municipalities Bankruptcy Law,* 77 Cong. Rec. 5459-5490. At a Farmers National Relief Conference held at Washington, D. C., December 8, 1932, 250 farmers, from 26 states, adopted a resolution from which we quote:

> "We are determined to stop a ruthless pressure from creditors who threaten to sweep us from our land and homes.
>
> "We demand: * * *
>
> "No evictions: During this national crisis Congress must declare all foreclosures, seizures of property and evictions illegal." (76 Cong. Rec. 232.)

Consult *Congressman McKeown,* (76 Cong. Rec. 222); *Article by Bernard Osterlenk,* (76 Cong. Rec. 610); *Congressman Patman,* (76 Cong. Rec. 1134); *Resolutions of Citizens and Taxpayers of Obion County, Tennessee,* (76 Cong. Rec. 1159); *Memorial of State Legislature of North Dakota,* (76 Cong. Rec. 1716); *Congressman Ayres,* (76 Cong. Rec. 1985); *Congressman*

McKeown, (76 Cong. Rec. 2785); especially the names of those mentioned by him; *Memorandum of Solicitor General Thacher*, (76 Cong. Rec. 2771); *Debate on Act of March 3, 1933*, (76 Cong. Rec. 2902 *et seq.*); *Congressman Hogg*, (76 Cong. Rec. 2938 *et seq.*); *Senator Thomas*, (76 Cong. Rec. 4694); *Senator Hastings*, (76 Cong. Rec. 4876, 4901); *Congressman Glover*, (76 Cong. Rec. 4949); *Memorandum Solicitor General Thacher*, (76 Cong. Rec. 5014); *Senator Walsh*, (76 Cong. Rec. 5089); *Senator Fletcher*, (76 Cong. Rec. 5089, 5097); *Congressman Hastings*, (76 Cong. Rec. 5783); *Congressman Gilchrist*, (76 Cong. Rec. 5785); *Senator Blaine*, (76 Cong. Rec. 5323); *Congressman Sumners*, (76 Cong. Rec. 5349); *Congressman Hastings*, (76 Cong. Rec. 3911); *Senator Tydings*, (76 Cong. Rec. 3934); *Congressman Lankford*, (76 Cong. Rec. 4257); *Senator George*, (76 Cong. Rec. 2864); *Congressman Hogg*, (76 Cong. Rec. 2938); *Congressman Kopp*, (76 Cong. Rec. 3037); *Congressman Jones, of Texas*, (78 Cong. Rec. 12130); *Congressman Johnson, of Texas*, (78 Cong. Rec. 12132); *Congressman Miller*, (78 Cong. Rec. 12135); *Congressman Lemke*, (78 Cong. Rec. 12134); *Congressman Randolph*, (78 Cong. Rec. 12136); *Congressman Busby*, (78 Cong. Rec. 12137); *Congressman Ruffin*, (78 Cong. Rec. 12138); *Congressman Greenway*, (78 Cong. Rec. 12138); *Congressman Carpenter, of Nebraska*, (78 Cong. Rec. 12149); *Senator Long*, (78 Cong. Rec. 12060-12067); *Senator Hastings*, (78 Cong. Rec. 12071, 12072, 12073-12075, 12077); *Congressman Martin, of Colorado*, (78 Cong. Rec. 12295); *Congressman Stubbs*, (78 Cong. Rec. 12267); *Congressman Ayers, of Montana*, (78 Cong. Rec. 12318); *Senator Walsh*, (78 Cong. Rec. 12377-12381); *Congressman Lemke*, (78 Cong. Rec. 12596-12600); *Congressman Truare*, (78 Cong. Rec. 12606, 12628); *Congressman Lozier*, (78

Cong. Rec. 12620); *Senator Bailey*, (78 Cong. Rec. 10676); *Congressman White*, (78 Cong. Rec. 10996); *Congressman McGugin*, (78 Cong. Rec. 9262-9264); *Senator Lang*, (78 Cong. Rec. 10184-10186); *Congressman Gillette*, (78 Cong. Rec. 8131); *Congressman Lundeen*, (78 Cong. Rec. 364); *Congressman Lemke*, (78 Cong. Rec. 180); *Congressman Swank*, (78 Cong. Rec. 252); *Congressman Jones*, (78 Cong. Rec. 720); *Congressman Patman*, (78 Cong. Rec. 746); *Congressman Foulkes*, (78 Cong. Rec. 755-760, 1532-1534); *Congressman Hastings*, (78 Cong. Rec. 6887); *Congressman Truare*, (78 Cong. Rec. 7369, 7719).

Congressman McKeown, (76 Cong. Rec. 2788), enumerated the following as among those who assisted in drafting section 77 B, National Bankruptcy Law, which in principle is identical with the Frazier-Lemke Act:

Judge Thomas D. Thacher (Solicitor General of the United States); Robert A. B. Cook, Boston, Massachusetts, Committee on Bankruptcy, Commercial Law League of America; Paul H. King, former President National Association of Referees in Bankruptcy; Harold Remington and W. Randolph Montgomery, counsel National Association of Credit Men.

76 Cong. Rec., p. 1869, discloses the following special message from President Hoover:

> "To the Senate and the House of Representatives:
>
> "On February 29 last I addressed the Congress on the urgent necessity for revision of the bankruptcy laws, and presented detailed proposals to that end. These proposals were based upon most searching inquiry into the whole subject which had been undertaken by the Attorney General at my direction. While it is desirable that the whole matter should be dealt with, some portions of these proposals as an amelioration of the present situa-

tion are proving more urgent every day. With view to early action, the department, the committees, the Members of Congress, have been collaborating in further development of such parts of these proposals as have, out of the present situation, become of most pressing need. I urge that the matter be given attention in this session, for effective legislation would have most helpful economic and social results in the welfare and recovery of the Nation.

"The process of forced liquidation through foreclosure and bankruptcy sale of the assets of individual and corporate debtors who through no fault of their own are unable in the present economic emergency to provide for the payment of their debts in ordinary course as they mature, is utterly destructive of the interests of debtor and creditor alike, and if this process is allowed to take its usual course misery will be suffered by thousands without substantial gain to their creditors, who insist upon liquidation and foreclosure in the vain hope of collecting their claims. In the great majority of cases such liquidation under present conditions is so futile and destructive that voluntary readjustments through the extension or composition of individual debts and the reorganization of corporations must be desirable to a large majority of the creditors.

"Under existing law, even where majorities of the creditors desire to arrange fair and equitable readjustments with their debtors, their plans may not be consummated without prohibitive delay and expense, usually attended by the obstruction of minority creditors who oppose such settlements in the hope that the fear of ruinous liquidation will induce the immediate settlement of their claims.

"The proposals to amend the bankruptcy act by providing for the relief of debtors who seek the protection of the court for the purpose of readjusting their affairs with their creditors carry no stigma of an adjudication in bankruptcy, and are designed to extend the protection of the court to the debtor and his property, while an opportunity is afforded the debtor and a majority of his cred-

itors to arrange an equitable settlement of his affairs, which upon approval of the court will become binding upon minority creditors. Under such process it should be possible to avoid destructive liquidation through the composition and extension of individual indebtedness and the reorganization of corporations, with the full protection of the court extended to the rights and interest of creditors and debtors alike. The law should encourage and facilitate such readjustments in proceedings which do not consume the estate in long and wasteful receiverships.

"In the case of individual and corporate debtors all creditors should be stayed from the enforcement of their debts pending the judicial process of readjustment. The provisions dealing with corporate reorganizations should be applicable to railroads, and in such cases the plan of reorganization should not become effective until it has been approved by the Interstate Commerce Commission.

"I wish again to emphasize that the passage of the legislation for this relief of individual and corporate debtors at this session of Congress is a matter of the most vital importance. It has a major bearing upon the whole economic situation in the adjustment of the relation of debtors and creditors. I therefore recommend its immediate consideration as an emergency action."

76 Cong. Rec. 2733 (1933), discloses the following extract from Radio Address, John A. Simpson, President of the Farmers Union, telling of a trip West:

"The revolutions over the country are increasing in numbers, in size, and in quality. There are many states now where the courts have revolted. In a meeting I addressed in the auditorium of the Central High School, Oklahoma City, two district judges voluntarily came to the stage and announced there would be no foreclosures in their courts until the prices of farm crops were reasonable. Such revolutions on the part of the courts are occurring all over the country. I found legislatures in open revolution passing moratorium laws

that violate the terms of contracts. I found farmers organizing by counties for the purpose of preventing sales of mortgaged property. In some instances these farmers have prevented these sales by force. In most instances by persuasion. However, in both instances it is revolution."

VIII

THE DEPRESSION

The issue as to The Depression is important to be considered in connection with the determination of this case. Whether or not the moratorium or repurchase privileges of the Frazier-Lemke Act are so unreasonable or arbitrary as to violate the Fifth Amendment must necessarily depend upon the economic conditions existing at the time of their enforcement. Vide authorities cited on this point. At the outset, let us particularize.

(a) The District Court and the Circuit Court of Appeals have both proceeded in the case at bar upon the theory that there is a worldwide condition of an economic nature justifying the enactment and present enforcement of the Act in controversy in this proceeding. Ordinarily, such a coincidence of thought on the part of two lower courts as to the facts of a case are binding on this Court.

But as the proceeding at bar transcends the limits of a personal controversy, and presents a question of public concern, we are perforce compelled to assemble information, meagre in its scope considering the wealth of material at hand; and yet all-compelling in its probative force and effect.

As to the debtor Radford: He owns a farm valued in 1922 and 1924, at $18,000. In the year 1934, the appraisers, with the approval of the District Court, and in the absence of any evidence to the contrary, valued the farm at $4,550. The loan thereon is $9,000. The carrying charge on such a loan, under land bank rules, is $630 a year. The referee fixed the rental at $325

a year, the same being deemed a "fair and reasonable value, not necessarily the market value" as the act provides, but also coincident with the market value as the record shows.

In the brief filed in the District Court, counsel for the lienholder made this statement:

> "On May 25, 1934, Harry B. Lane, an appraiser of the Farm Credit Administration, assigned to the Federal Land Bank of Louisville, appraised the mortgage farm and fixed its recovery value, i. e., its cash sale value at $5,000, and its normal market value at $6,700." (Original brief, p. 7.)

In the brief in the District Court, counsel for the lienholder made this guarded statement: "In fact if the Farm Credit Administration's definition of normalcy be accepted, there is no present agricultural emergency." (August, 1924.) At the same time, counsel referred to "the currency inflation which many careful observers consider inevitable" and also stated: "There is no certainty that the value of the mortgaged farm may not be much greater in two years than it now is, and much less in five years than it now is."

The lienholder made two loans to Radford aggregating $9,000. At the time of the foreclosure, the principal of these notes, had been reduced by payment to $7063.43 and $891.21 respectively, a total of $7954.64, or less than $8,000. The lienholder did not offer to renew its loan by accepting a new mortgage, and starting Radford over again, on a reduced carrying charge. It makes no such offer now. It seeks to foreclose the mortgages executed by Radford.

Much was said in the briefs in the courts of first instance as to the alleged failure of Radford to refinance his mortgage through Federal Land Bank, Louisville, Kentucky. No showing was made as to how much,

if any, that bank was willing to loan Radford; (certainly not $8,000 on a present cash value of $5,000 and a rental value of $325 annually), and no evidence that the lienholders would accept in discharge of its debt, the amount the Federal Land Bank might have been willing to loan to Radford.

Louisville Joint Stock Land Bank is liquidating its affairs. Why? Because in the present economic conditions prevailing in this country, it is impossible to sell a farm loan, the payment of which is not guaranteed by the government.

When the case reached the Circuit Court of Appeals, counsel for the lienholder did not contend that the emergency was then over. The complaint was that the Frazier-Lemke Act was "not limited to the existence of an emergency." The statement hereinbefore quoted from the brief in the District Court: "* * * there is no present agricultural emergency" was not contained in the brief in the Circuit Court of Appeals.

In the Circuit Court of Appeals, a quotation was made from Gov. Myers (Farm Credit Administration), to the effect that the activities of that agency "*will* eliminate an extensive need for resort to the provisions of the Frazier-Lemke Act." This was but the expression of a hope, not the statement of an existing fact. In the District Court for the Northern District of Indiana, on March 28, 1935, there were pending 279 section 75 cases.

But there is no showing that Farm Credit Administration (which has only refinanced one-fifth of the outstanding farm mortgages), will loan Radford a sum of money sufficient to induce Louisville Joint Stock Land Bank to release its mortgage.

As to the substantive showing of an emergency, the Court is reminded:

(a) Congress is considering the issuance of $4,800,000,000 in bonds for public improvements, to furnish empoyment for the jobless.

(b) The showing made in the *Gold Cases*, just decided by this Court as to the economic necessity for the legislation therein considered.

(c) Congress is extending the loan power of Home Owners' Loan Corporation by $1,750,000,000. Why?

In fact, practically every effort of the Administration is now devoted to placing money in circulation by issuing government bonds, and then spending the money derived from a sale thereof. Every demand for governmental funds (and "their name is legion"), has that motive as its basis.

Home Life Magazine for January, 1935, contains the following statement from the Insurance Department of the State of New York:

"In common with other life insurance companies, this Company has experienced during the past three years a loss in the volume of new business written, and an increase in the demand for policy loans and in the number of policies offered for surrender. A satisfactory cash position has been maintained throughout this period. As explained in the section of the report covering dividend methods, the Company decreased the scale of dividends paid policy holders in 1933 by 20% and the lowered scale has been continued for 1934."

The annual statement of Home Life Insurance Company (December 31, 1934), shows that 23.9 percent of its assets represents loans on its own policies. Why this borrowing on what rightly considered, should be regarded as a sacred possession?

In his most recent monthly Bulletin (February), Col. Leonard P. Ayres, well known economist of Cleveland, says:

"The index industrial production is given at 21.7

percent below normal for December, with a preliminary figure of 18.1 percent below normal for January, and an estimate of 18.1 percent under normal for February."

We are indebted to the annual report as of December 31, 1934, of The Lincoln National Life Insurance Company of Fort Wayne, Indiana, for the following information:

> "Improvement in the combined production of new business of all the life insurance companies was shown in 1934 for the first time in five years, for though production in 1934, increased ten per cent over 1933, yet the total insurance in force in all companies was less at the end of 1934 than at the end of 1929."

Again:

> "During the last five years, the companies as a whole have paid to policy owners and their beneficiaries, over 15 billion dollars more than half of it to living policy holders."

Counsel for the respondent respectfully submits that if in five years, the living policy owners of life insurance companies have withdrawn in cash on account of their policies, over seven billion dollars, it cannot fairly be said that we are not in a state of financial depression, for life insurance is the last asset a man surrenders.

The report further calls attention to the fact that in 1934, the liquid securities of the company were increased by $11,514,000, and then adds: "Only in times of great depression does a life insurance company need to have any considerable percentage of its funds invested in liquid securities."

The report continues: "In 1934, we sold direct or *disposed of through Government agencies*, over $4,000,000.00 of properties and mortgages * * *."

We are also advised: "It has been the experience of life insurance companies which passed through previous panics that the losses sustained on foreclosed properties sold in the first five years of recovery were offset by profits on the better properties sold in later years. Every piece of real estate, except the Home Office property represents a property foreclosure or in effect, a property purchased by us, *at a sacrifice price*. The present mild inflation and business improvement is already benefiting those properties."

Why should lienholders secure all the gain derived from purchasing properties at "a sacrifice price," and all the benefits derived from an improvement in business conditions?

The report states:

CHANGES IN PREMIUM RATES

You have perhaps noticed in the press that several of the large companies have changed the rate of interest used in their basis of valuation. These companies are all participating companies and there are many practical reasons why a participating company should make this change. None of the large non-participating companies has made a change in the rate of interest used in its basis of valuation. However, some of these companies have made substantial increases in their premium rates and have reduced their surrender values. In July of 1934, we issued a new rate book with modified surrender values and with minor changes in premium rates. We have the question of further changes in premium rates and values under careful study at this time.

Why all this if there be no depression, as the lienholder in the case at bar contended in the District Court?

We quote further from the report:

Our greatest problem now is to find safe investments that will net us an interest return in excess of that required to accumulate our policy reserves.

The officers of your Company devote their entire time and attention to its business. Through the depression the organization has been held intact and, after the gruelling experiences of the past few years, is better able than ever before to serve intelligently the best interests of policy owners.

We express our deep appreciation to our policy owners and to

their friends, the agents, for their loyalty to The Lincoln National during the recent unsettled years, and in return we pledge you ours.

A recent newspaper article says:

LEWIS DOUGLAS' FEAR—U. S. DICTATOR AFTER SPENDING

Ex-Director of Budget Warns of Ruined Currency and Revolt

Philadelphia, March 14 (AP)—Destruction of the nation's currency and "middle class" population and possible establishment of a dictatorship were regarded today by Lewis Douglas, former director of the federal budget, as ultimate possibilities in a continued policy of governmental spending.

Douglas resigned his budget post under the Roosevelt administration.

A Black Picture

In a criticism of the national administration's "spending policies" and the "increasing deficits in the federal budget" Douglas painted an "extremely black and forbidding picture of events" which can follow continuance of such a fiscal course.

He said:

"If the spending policy continues, quite irrespective of the disguised and concealed inflationary methods which have been employed; quite irrespective of the absence of the standard tests of government credit; quite irrespective of the amount of gold which we may hold, the effect must be catastrophic."

Chicago Tribune, March 5, 1935, states that 2,500 reorganization proceedings under Section 77B are pending in New York City.

W. M. Kiplinger and Frederick Shelton have issued a publication entitled "Inflation Ahead," to which the attention of the court is directed. This pamphlet is devoted to the proposition that inflation of the currency is at hand and attempts to show how a skilled investor may take advantage thereof. The advice of the authors in view of the impending inflation (as they view it), is to acquire tangibles "such as farm lands."

In the "Wall Street Journal for March 5th, 1935, is a review of the new amendments to Section 77, which are included in Railroad Coordinator Eastman's program, and which have been revised by the House Judiciary Committee.

This provides *inter alia*

"2. Elimination of the provision that fixed charges

of the new company shall not exceed 80% of the earnings available for such short charges in the three years of the lowest income of the period decide to a provision that fixed charges shall be reduced to such an amount as may be adequately covered by probable earnings."

The Home Owners Loan Corporation has already loaned $3,000,000,000.00 on homes, and an effort is now being made to secure additional authority for $1,500,000,000.00. Minnesota is extending its mortgage moratorium act, and Iowa has enacted a similar one.

The situation is serious and rapidly growing more serious. In the "Chicago Tribune" for March 25th, is the following heading, "Congress Turns to Inflation as Prosperity Lure," and the article says, *inter alia*:

"With confidence waning in the New Deal's recovery expedients, congress is turning toward currency inflation as a last resort to superinduce the return of prosperity. The old hard times cry for more and cheaper money has become a swelling chorus on Capitol hill."

JOINT STOCK LAND BANKS

Joint stock land banks have found it necessary to scale down their indebtedness. In fact a number have gone into the hands of a receiver and settled for their bonds at much less than par.

On page 44 of the Fifteenth Annual Report of the Federal Farm Loan Board for the year ending December 31, 1931, is the report of the Kansas City Joint Stock Land Bank receivership, one of the largest in the system. Total liabilities exceeded $44,000,000.00.

This bank liquidated its entire indebtedness at 57.01 percent on the dollar to its bondholders. On page 47 of the same report is the statement that the Ohio Joint Stock Land Bank paid to its bondholders a total of 57.38 percent.

Others have secured scaledowns without a receivership! Burlington Joint Stock Land Banks offered 35c

on the dollar, plus accrued interest for half its bonds, Lafayette Joint Stock Land Bank called half its bonds at 67 for the 5's, and 66 for the 4's, and Minneapolis Joint Stock Land Bank paid $700.00 cash per $1000.00 bond in full settlement.

In the "Comparative Analyses" of the joint stock land banks, issued by Webster Kennedy & Company, 40 Wall Street, New York, N. Y., (specialists in Joint Stock Land Bank Bonds,), under date of September 8, 1933, it is said:

"Manifestly, many of these institutions may have to face a crisis in the next few months. In our bulletin of May 20th we stated that reorganizations were necessary and imminent. Since that time two plans have been successfully consummated, another was attempted but failed signally to get bondholders' support. This failure probably spells the end of the Des Moines type of reorganization and the next step will probably take the form of a request for voluntary interest reduction on the part of the bondholders."

That this was no idle prophesy, is demonstrated by the fact that a number of the joint stock land banks since then have asked for tenders of bonds at stipulated prices far below par, as above stated.

An interesting review of the difficulties of the joint stock land banks is contained in a memorial to Congress by Everett Sanders, dated October 26th, 1931, in which he says, p. 22:

"In the year 1930 the total farm-mortgage debt of the United States represented about 22 per cent of the value of all farms, compared with only 10 per cent in 1910 (Report of Secretary of Agriculture, 1930, p. 36). Due to the agricultural depression with its reduced farm-commodity prices and its reduced farm land valuations, many loans that had seemed secure when made have proved uncollectible. This has greatly reduced the revenue of joint stock and Federal land banks. They have been forced, much against their will, to acquire a large number of farms. The banks are not organized to operate or rent these farms and they can not sell them at the market price without incurring further loss. The farm loan system was not designed to absorb these heavy losses."

In proof of the fact that Frazier-Lemke cases do not constitute any undue burden to the joint stock land

banks, attention is called to the following extract from "Financing Agriculture in 1934," by the Farm-Credit Administration. It is stated, page 23:

Joint Stock Land Banks

"The Emergency Farm Mortgage Act of 1933 provided for the liquidation of joint stock land banks which are privately capitalized institutions organized under the Federal Farm Loan Act passed in 1916. Like the Federal land banks, they make long-term amortized loans on first mortgages on farm real estate from funds obtained primarily from the sale of bonds to the investing public.

During the period from organization to April 30, 1933, the last month-end before the banks were placed in liquidation, more than 130,000 loans, for approximately $900,000,000, were made by these banks. During the same period, joint stock land bank bonds in excess of $800,000,000 had been sold to the investing public. As of April 30, 1933, the 45 operating joint stock land banks held 74,737 loans, in the amount of $390,101,036. As of December 31, 1934, the number of loans had been reduced to 47,119 and the amount to $232,862,612. This represents a liquidation of 40.2 percent on the basis of the amount of unmatured loans oustanding, most of which has been effected through the refinancing and purchase of loans by the Federal land banks and the Land Bank Commissioner. During the same period bonds in the hands of investors and notes payable were reduced from $419,810,184 to $279,404,577, or 33.5 percent."

No showing is made as to the number of Frazier-Lemke cases that may be filed, nor how they affect joint stock land banks. But we submit that under no stretch of the imagination can it be a serious matter to these institutions, whereas the injury to the nation is incalculable if the farmers are evicted.

This subject was exhaustively debated in Congress. Evan Clark's book, "The Internal Debt of the United States," was accepted as authoritative. He estimated that all the insurance companies combined held about $2,146,000,000.00 of farm mortgages.

In the "Wall Street Journal" for July 3, 1934, Governor Myers of the Farm Credit Administration stated only 14 percent of the commissioner's loans, which are made to the most heavily indebted farmers, were delinquent. Two thirds were for less than 30 days.

It is probable that even under present prices, the entire loss to the mortgage holders will not exceed 10 percent of the face amount of the mortgages.

A tidy sum, we admit, but one that the farmer is not responsible for, and insignificant compared to his

importance in the general economic scheme, and very small compared to the $3,500,000,000.00 loss in public utility investments the last year alone. The mortgage holders will minimize any loss just as the Farm Credit Administration has pointed out, (see subsequent quotation) if they will permit the farmer to remain on his farm, and permit him to buy it back at the full appraised value. If they take it over, it is possible their loss will be much greater before they are through. In the meanwhile the farmers, most of whom are past the prime of life, are pauperized.

WHITHER FROM HERE!

In the "Chicago American" for March 25th, 1935, B. C. Forbes, a well known financial writer, says:

"The New Deal was voted into power mainly on promises to restore prosperity, to enable the working classes to enjoy "life more abundant."

Alas, two years of New Deal activities find virtually one person for each family in the United States compelled to undergo the humiliating experience of subsisting on public charity.

More: The securities owned by upwards of 20,000,000 individuals and families who saved money have lately been shrinking disheartteningly in value; they have this month reached new low depths for the year, far below their market worth twelve months ago. The monetary loss suffered by one group alone, investors in public utility securities, is authoritatively computed at $3,500,000,000 – three thousand five hundred millions of dollars.

No satisfactory progress is being made in reabsorbing the many millions of idle wage-earners, notwithstanding that since the present administration took office our federal debt has soared some ten thousand million dollars.

No important new enterprises are being launched to employ labor.

Capital raising has been practically at a standstill. Of late, such accepted economic yardsticks as railway freight, steel production, as well as security values, have been reflecting diminishing activity and confidence."

There has been published in one of the great newspapers of the country, "The Chicago Daily News" for Monday, March 4th, 1935, a study of the original aims and present results of the administration's attempts to lift the country out of the depression. It is true that this review is published in a paper that on the whole,

is in opposition to the present administration. Yet the "Chicago Daily News", is one of the great newspapers of the world, recognized as such, and going among its hundreds of thousands of readers necessarily can not present only one side of a national problem such as exists at the present. Space does not permit the reproduction of all of this interesting review. The following quotations speak for themselves:

We quote from Chicago Daily News, Monday, March 4, 1935:

"On the second anniversary of the taking of office by the Franklin D. Roosevelt administration, The Daily News presents the following studies of the original aims and present results of the four essential sets of New Deal policies: Those relating to money and credit, to unemployment and industrial relief; to industrial labor relations, and to farm relief.

MONEY and CREDIT

The Policies:

The democratic campaign platform of June 29, 1932, pledged a cut of 25 per cent in federal expenses, a budget balanced annually, and a "sound currency to be preserved at all hazards." But these aims, though solemnly promised, were quickly abandoned. In the stress of the banking crisis the export of gold was forbidden, all gold in the country was seized by the government, the dollar was allowed to depreciate, and presently a stabilization agreement with Britian was sought. But inflationists ideas were gaining ground. Congress gave the president power to devalue the dollar by 50 per cent, at his discretion. The gold clause in public and private contracts was abrogated.

The Results:

Neither the gold, the silver nor the credit policies of the administration have achieved the results hoped for. The devaluation of the dollar has been a drag on world prices, and has slowed up recovery, just as did the devaluation of the British pound sterling.

The silver purchases gave a kind of subsidy amounting to millions of dollars to small groups interested in silver production or speculation, but cannot be shown to have helped the country as a whole in any particular. Our trade with China, far from increasing in consequence, is decreasing, because our boost of silver prices is violently deflating that country.

The 1926 commodity price level has not been attained. The commodity index two years ago was about 62—taking 1926 as 100. At the first of this year it was about 76. The increase, due partly to the drought so far as farm products are concerned, amounts to only some 22 per cent, whereas the dollar has been devalued by 41 per cent. In other words, in terms of gold, American commodity prices are lower now than they were two years ago.

The intended credit inflation has not yet taken place, either. The total of net demand deposits in the member banks of the

federal reserve system was about $13,000,000,000 two years ago. It is now about $19,000,000,000. The difference of $7,000,000,000 is a rough measure of the amount of uninvested savings which has piled up unused in the banks for lack of confidence on the part of business men and other investors. Federal tax collections in these past two years have increased by more than $1,000,000,000. And whereas previously only 46 per cent of the total federal income was derived from various sales taxes paid by consumers, the percentage of federal sales taxes is now 62 per cent of the total income.

The national debt in the brief space of two years has been increased from $22,000,000,000 to $33,000,000,000, to which may be added several billions more in contigent liabilities. The budget is hopelessly out of balance. A large annual deficit is forseen. And no effort is announced either to work toward an eventual balancing of the budget or an eventual firm stabilization of the dollar. On the contrary, the inflationists are still at work, and rumors are even now being spread of some new future devaluation.

Unemployment and Industrial Relief

The Policies:

The major New Deal policies designed to end unemployment and to maintain the jobless and destitute pending their restoration to work and wages were:

(1) NRA, set up under the national industrial recovery act NIRA. By reorganizing business under codes, it was proposed to end unfair competition and thereby prevent wage-cutting and long hours. This, it was promised, would provide additional purchasing power to stimulate the demand for goods so that industries and trading establishments would rapidly re-employ the jobless.

(2) PWA, under the administration of Harold Ickes, carried out on a vastly enlarged scale the plan for employing labor on public works that had been incorporated in the 1932 recovery laws adopted by congress under President Hoover. In addition to the money left over from that program that was only getting under way, $3,300,000,000 was appropriated for PWA. In June congress appropriated another $400,000,000. Mr. Ickes has had the spending of a sum equal to almost twice the amount that was used to carry on the Civil War.

(3) Failure of NRA to solve the unemployment problem by the fall of 1933 led the emergency public works program, carried out under Harry L. Hopkins. This came to an end in April, 1934.

(4) FERA. Failure of state and local funds led to the direct grant of money from the federal treasury for the relief of the jobless and destitute, whether employable or not. This relief has been supervised by the federal emergency relief administration under Harry L. Hopkins, the administrator also of CWA. The character of relief has varied according to locality. Cash relief, work relief, relief by direct allotment of food, fuel, clothing and rent, and more ambitious projects such as the Ohio plan for the manufacture of goods needed by persons on relief, have been parts of the varied system under FERA direction.

The Results:

There are no official or complete figures on unemployment, but several careful monthly estimates are made by various agencies. These estimates are based in part on the statistics gathered from a large number of industrial and commercial establishments by the United States Bureau of Labor Statistics. On the basis of those figures and supplementary data, the American Federation of Labor

estimates the number of unemployed in the country to have been in March, 1933, the beginning of the New Deal, 13,689,000. A year later the number is estimated to have been 10,849,000. The latest estimate is for December, 1934, and places the number at 11,329,000.

The National Industrial Conference Board, an employer's organization, makes more conservative estimates. Its estimate of the number of unemployed in March, 1933, was 13,175,000; in March, 1934, 9,137,000, and in December, 1934, 9,602,000.

No official government count or estimate of the total unemployment of the country has been made since the unemployment census of 1930, but on Feb. 25 an estimate was given out by government publicity men as part of a sixty-eight page report on the operations of the national recovery act. The report was attributed to the National Emergency Council, one of the numerous New Deal committees, and it contained an estimate of unemployment prepared by Prof. Winfield Riefler, recently resigned economist of the council. The Riefler estimates placed the number out of work in December, 1934, at 10,830,000. The peak of unemployment was set at 13,597,000 in March, 1933. The estimate claimed that 3,536,000 had been put back to work under the New Deal, but as 769,000 more persons had become of working age in the same period, the net decrease in unemployment under the New Deal was only 2,767,000.

While this staggering burden of unemployment persisted, the number of persons on relief is reported by the federal emergency relief administration to have been in July, 1933 the first month for which a comprehensive count exists 15,282,000. Because of the CWA, the number fell to 11,105,000 in January, 1934, after which it increased to 13,639,000 in March, 1934; 17,398,000 in May, 1934; 18,622,000 in September, 1934. The number was 19,500,000 in December, 1934, according to a preliminary estimate, the last available.

NRA—

Gen. Hugh Johnson promised to put 4,000,000 additional men to work under the Blue Eagle by Labor Day, 1933. Results fell so short of the general's hopes that CWA was launched shortly afterward.

The course of industry, employment and pay rolls under the New Deal can be traced in the indexes of industrial production prepared by the federal reserve board and in the indexes of employment and wages prepared by the United States Bureau of Labor Statistics. These indexes are based on the average production, factory employment and factory pay rolls of the three years 1923, 1924 and 1925, rated as 100 per cent.

At the beginning of the New Deal, in March, 1933, production stood at 60, employment at 59 and pay rolls at 37 per cent of the 1923-1925 average. In July, 1933, before NIRA had gone into effect and with a lively fear of inflation and higher production costs ahead, production stood at 96, employment at 72 and pay rolls at 51. In March, 1934, production stood at 86, employment at 81, pay rolls at 65. In July, 1934, production was at 73, employment at 79, pay rolls at 61. In December, 1934, production was up to 78, employment to 78 and pay rolls to 63.

PWA—

On Feb. 10, 1935, Harold Ickes, PWA administrator, reported that of 18,817 projects undertaken 10,129 had been completed. Construction is now in progress on 6,378 projects, and 2,310 have not been started. Projects embrace highways, water works, dams, power plants, schools, sewers, hospitals, housing, coast guard vessels, national defense construction—including $238,000,000 worth of ships for the navy—public buildings and railroad improvements.

The value of the completed projects is set at $432,000,000. The value of projects under construction is set at $1,920,000,000. Total allotments for federal projects carried out directly by PWA have been $1,777,825,105. Allotments for nonfederal projects carried out by local governments, railways and other private corporations total $985,681,949.

About half the nonfederal allotments were grants of only 30 per cent, the favored local governments borrowing the remainder. From PWA funds there has been paid out $906,045,166 for the CWA, CCC, and other agencies not necessarily building permanent works.

On Nov. 18, 1934, a press release of PWA made the claim that approximately 2,000,000 persons were gainfully employed, either directly on PWA works, or indirectly in the extraction and fabrication of materials used in PWA construction.

On the Columbia river and at other sites PWA is engaged in the construction of hydroelectric works which, added to those undertaken by TVA, and proposed on the St. Lawrence river in the seaway treaty not yet ratified by the United States senate, would practically double the amount of horse power of electrical power installed in the country. But much of this power is remote from present markets for electrical energy.

CWA—

This is now a practically closed chapter of the New Deal history. Its official end was March 31, 1934, when it had 2,133,00 men in its army of emergency workers, many of whom were employed on jobs that were admitted to be of doubtful value, the main idea being to shift men from the passive dole to a more active life. At one time 4,000,000 men were on CWA pay rolls. Its weekly average employment was 3,000,000 men. CWA began with an allotment of $400,000,000 of PWA funds and was soon costing the government $50,000,000 a week, when widespread charges of graft and scandals, popping out all over the country, brought about a determination in Washington to end it forever in the spring of 1934. At the end, when CWA was merged into the much smaller "works division" of FERA, Mr. Hopkins estimated that CWA had spent $750,000,000 on wages and $250,000,000 on materials—about $1,000,000,000 in all. On cash relief, it was then estimated, the same number of people could have been supported for the same length of time for $510,000,000.

FERA—

The work of FERA is familiar to practically all citizens. It is now supporting, from public funds raised by taxation and borrowing of federal, state and local government units, almost one out of every six persons in America—a population greater than that of Australia and Canada combined. Total cost of all the relief distributed under FERA auspices cannot be stated except approximately at this time, but it runs in excess of $100,000,000 a month and is believed to have been as high as $120,000,000 in some months. In some states the expenses per person on relief has been increasing so that there is no decrease in total outlays even where there is a decline in the number on relief.

It has been unofficially estimated by newspaper men who have interviewed Harry L. Hopkins on the subject that Mr. Hopkins has spent since May 23, 1933, $3,000,000,000 on all forms of relief, and is now disbursing up to $5,000,000 per day from all sources and on all forms of relief. On March 1, 1935, Mr. Hopkins raised the estimate of the total number of persons on relief to 20,000,000, announced that the huge sum of $525,000,000 voted last year for the relief of drouth-stricken farmers was nearly exhausted and expressed

the hope that the peak of unemployment and the relief burden would be reached by April 1 of this year.

INDUSTRIAL LABOR RELATIONS

The Policies:

The essence of New Deal labor policy was embodied in section 7A of NIRA. It promised the workers that they should have the right to bargain collectively with their employers by means of representatives chosen by the workers themselves.

This promise, supported interpretatively by many New Deal spokesmen, gave organized labor and its liberal sympathizers the impression that the trade-union movement was to enjoy the unprecedented position in the national life and that the wage earner was to draw huge benefits in the way of shorter hours, higher pay and increased society security. Section 7A was supposed to be the Magna Charta of organized labor, underwriting the right of unions to organize. It was understood that it would do away with company unions, and enable the American Federation of Labor to unionize industries from which it has thus far been barred by intransigent employers or the indifference of the workers. President Green of the American Federation of Labor spoke of the prospect of unionizing 25,000,000 workers.

The Results:

The consequences of New Deal industrial relations policies have been disappointing to all concerned. From August, 1933, to August, 1934 (the last period reported), there was an increase of only 697,893 in the number of members of A. F. of L. unions, despite tremendous efforts of the unions' officials and favorable utterances by certain New Dealers. The total membership of the A. F. of L., as reported last October, was 2,824,689, as compared with the peak of 4,000,000 in August, 1920.

While figures for company unions are incomplete, there is reason to accept the estimate that their membership has increased at least twice as fast as has the A. F. of L.'s.

FARM RELIEF

The Policies:

The Democratic platform of 1932 strongly condemned "the extravagance of the farm board, its disastrous action which made the government a speculator in farm products, and the unsound policy of restricting agricultural production to the demands of domestic markets." The agricultural adjustment act virtually ignored that condemnation. It far outdid the farm board in the very things for which that board had been criticized.

Under this act the agricultural adjustment administration—the AAA—was set up. Its main business was its attempt to restrict the production of staple crops, with the purpose of adjusting supply to demand (domestic demand principally), and thus to raise the prices of farm products to what was called the "prewar parity" that is, the relation that prevailed prior to 1914 between the prices of what farmers have to sell and of what they buy.

The plans adopted conformed in general to the so-called "domestic-allotment plan" worked out by agricultural leaders of the corn belt. Crops were reduced by agreements with farmers to plow under or not to plant to the controlled crops certain percentages of their land. In return they received rentals for the unused land, or, as in the case of hogs, payments based upon the amounts by which they reduced normal production. These payments came from funds that were eventually to be returned to the treasury from the proceeds of processing taxes levied upon farm products sold to pro-

cessors, handlers, middlemen, wholesalers. The consumer was supposed to pay this tax eventually in the form of higher prices for farm products sold in final form at retail.

In addition to this elaborate plan of crop control applied to cotton, wheat, corn, hogs, tobacco and some minor crops, special measures were adopted to deal with the production and importation of sugar; the dairy industry was to be organized on a basis of "milk sheds" supplying great metropolitan districts and other groups of consumers

Special controls and agreements were provided for a great variety of minor crops, such as cling peaches, olives, citrus fruits and peanuts, while AAA also took some measure of jurisdiction over products that naturally compete with the products under its major controls, such as rayon.

Several emergency measures were added to the program originally undertaken—such as the emergency pig-killing program, the corn and cotton loans, and other measures adopted after a fall in prices in the summer of 1933, following preliminary inflationary price rises. The Bankhead act limiting the number of bales of cotton that could be grown, except for the imposition of a prohibitory tax, was not originally an administration measure, but was forced by southern cotton growers. That was true also of the Kerr act rigidly limiting the growing of tobacco.

Extensive refinancing of farm mortgages under the auspices of the federal credit administration did not appease the radical farm groups of the northwest, so the Frazier-Lemke law was enacted by congress to force farm-mortgage holders to make concessions to debtors or to submit to long delays in obtaining satisfaction of their claims in court.

Finally the incidence of the great drought of 1934 forced radical alterations in all the plans and procedure of AAA, and caused huge direct expenditures by the government for direct relief of drought-stricken farmers and for the purchase of cattle on farms to keep them for lack of feed and water.

The Results:

The general effect of the adminstration farm program can never be accurately assessed because an unforseen calamity, the great drought of 1934, suddenly wiped out most of the great accumulated surpluses because of which the restrictive program had been undertaken. That of itself, however, is an indictment of the whole theory of a planned agriculture upon which the program was based, because the impossibility of crop control was thereby revealed in a tragic manner. In addition to that, the records of the weather bureau show that in the northern states such deficiencies of past rainfall and subsoil moisture were already in existence, prior to the inauguration of AAA, as to indicate to competent planners the terrific hazard of the restrictions undertaken.

On the other hand, the drought undoubtedly saved the restriction programs from the burden of additional surpluses that might have been raised on the acres actually planted by farmers who co-operated in the restrictions and, by those who refused to reduce their acreages.

At the beginning of 1935, as the combined result of the drought and the restrictive measures of AAA, the nation found itself with 20,170,000 fewer hogs than it had the year before—the smallest number on farms in fifty years. This shortage was caused partially by the purchase and slaughter of some 200,000 brood sows and some 7,000,000 baby pigs in the last months of 1933, when a virtual panic seized the AAA because pork prices had failed to rise after imposition of the processing tax. Farmers for a time were paying the tax themselves in the form of reduced prices for hogs. Before

the drought some Iowa hogs were nearly all "tax" and very little "pork"—hogs were bringing $2.80 per 100 pounds at the farm gate, while the processing tax had been raised to $2.25 per 100 pounds.

The nation's herds of cattle and calves were reduced last year by 7,523,000 head. In drought areas the government bought 8,186,962 for $108,335,823. Of these 1,424,879 were condemned as unfit for human food and destroyed on the farm.

The herds of sheep, lambs and goats were reduced by 2,446,000 head. The government spent $5,135,051 to buy up drought-distress sheep and goats.

The farm value of the 1934 crops was estimated by the department of agriculture at $4,782,626,000, an increase of $668,361,000 over 1933—a purely monetary gain accomplished by a holocaust of real wealth. The corn crop shrank from 2,581,658,000 bushels to 1,380,718,000, the smallest harvested since 1894. The wheat crop totaled 496,469,000 bushels, almost a record low since the United States became a great nation. The oat crop was barely a third of normal. The cotton crop of 9,731,000 bales was less than the upper limit set by the Bankhead law—which proved to have been unnecessary to attain its objects. Only in potatoes was a substantial gain recorded in staple crops. Today the United States is importing cattle from Canada and Mexico, corn and oats from the Argentine, corn from the Danubian lands of Europe, rye from Poland and Russia, butter from New Zealand, Argentina and Canada, and even eggs from our Canadian neighbors.

Attainment of Parity

The bureau of agricultural economics on Feb. 1, 1935, claimed that the program of raising farm prices to "prewar parity" had arrived at this point: "There are now fourteen commodities defined as 'basic.' For seven of these there are adjustment and processing tax programs in effect. The prices of these fourteen commodities averaged 52 percent of prewar in February, 1933, compared with 55 percent for all farm products. During the period August, 1933, to March, 1934, they remained within a range of 73 to 80 percent, and during the last quarter of 1934, due largely to the drought, they averaged close to the prewar level, as did the average of all commodities.

"Processing taxes, considered as additions to prices received on domestic allotments, when paid out as benefit payments, added approximately 30 percent to the December, 1934, price level of the seven 'basic' commodities on which they were collected and about 17 percent to the price level of the fourteen 'basic' commodities. Compared with prices paid by farmers, or 'parity' prices, at 126 percent of the prewar level, these 'basic' farm products, exclusive of benefit payments, had a purchasing power of about 80 percent, and, including benefit payments, 91 percent."

"Prewar parity" has not been attained, despite subsidy, restriction and a drought that reduced the nation's farm yield by half.

Finances of the Program

On Jan. 12, 1935, the total of government benefit payments to farmers participating in crop control plans, by acreage reduction and otherwise, was $580,772,564. Collection of processing taxes on Jan. 8, had reached a total of $647,550,788.

However, this "self-financing" of the control program does not embrace money spent for drought relief and seed conservation, which up to Dec. 1, 1934, totaled $160,384,043, and does not embrace other millions spent by FERA for rural unemployment relief, much of which was made necessary by the unemployment of farm hands and

share-croppers ousted from their jobs as a result of the curtailment of crops.

Government loans on corn and cotton are repayable, of course, and, because of the price rises since the drought, have been either repaid or can now be considered liquid. So far as the refinancing of farm mortgages by FCA can be considered in the same light as the refinancing of urban mortgags by HOLC—a real-estate investment by the government.

Payments of AAA benefits by commodimties have been as follows: Cotton, 1933 program, $122,739,150; 1934 program, $93,803,3074 exercise of cotton options, $12,175,445; cotton option pool, $30,318,288; tobacco, 1933 program, $2,051,089; 1934 program, $16,776,537; wheat, 1933 program, $89,189,046; 1934 program, $54,705,861; cornhogs, $159,957,478, and sugar, $55,541.

Processing tax collections up to Dec. 1, 1934, were: On wheat, $170,039,906; cotton, $185,242,286; tobacco, $30,216,488; corn, $7,585,756; hogs, $162,325,356; paper and jute, $11,113,857; sugar, $27,735,858; peanuts, $582; cotton-ginning tax under Bankhead act, $45,034; tobacco growers' sales tax under the Kerr act, $458,705.

CONCLUSION

The material result of two years under the New Deal can be briefly summarized as follows:

The dollar reduced to 59 cents in terms of its former value and still not formally stabilized.

The national debt increased from $22,000,000,000 to $33,000,000,000 by June, 1935.

The budget out of balance by several billions a year.

The number of unemployed reduced from perhaps 13,000,000 to perhaps 10,000,000.

The number of individuals on relief increased to about 20,000,000.

Some $18,000,000,000 of net demand deposits lying idle in the member banks of the federal reserve system, due to lack of confidence.

The burden of taxes steadily increased and bearing ever more heavily on the population as a whole.

A rapid increase in the cost of living, out of proportion to increases in wages and other income.

A shortage of certain farm products, leading to importations of cattle and grain.

The commodity index still nearly 25 percent short of the 1926 level, despite a 41 percent devaluation of the dollar; and the ratio of what the farmer sells to what he buys still below the prewar parity.

AGRICULTURE IS THE ANSWER!

Alexander Hamilton put Agriculture First!! President Wilson emphasized its importance in the National Economy.

Recently—

RECOVERY HINGES ON FARM GAINS, SAYS RAIL CHIEF

Sargent Asserts Growers Should Be Aided First

Clinton, Ia., March 15.—Criticising the New Deal for having confused zeal for reform with sound, constructive efforts toward recovery, Fred W. Sargent, president of the Chicago & North-

WHAT PRICE AGRICULTURE!

President Wilson, in his inaugural address delivered March 4, 1913, directed the attention of the country to the fact that the agricultural industry should be "afforded the facilities of credit best suited to its particular needs." In his First Annual Address to Congress, delivered December 2, 1913, the President presented to the Congress the urgent necessity of making special provisions for facilitating the credits needed by the farmers of the country.

Said President Wilson:

"It has, singularly enough, come to pass that we have allowed the industry of our farms to lag behind the other activities of the country in its development. I need not stop to tell you how fundamental to the life of the Nation is the production of its food. Our thoughts may ordinarily be concentrated upon the cities and the hives of industry, upon the cries of the crowded market place and the clangor of the factory, but it is from the quiet interspaces of the open valleys and the free hill sides that we draw the sources of life and pros

Western railway, said tonight that only through solution of the age old farm problem will other problems be solved.

Many things are being done, he told the Clinton Chamber of Commerce, that are probably retarding rather than hastening the day of business revival.

Sargent recommended a farm program of greater diversification and utilization of all reasonably profitable land for crops now grown only in a small way. Recent efforts of the government were probably necessary as an emergency measure, but they do not constitute a permanent remedy, he declared.

Farmer Gets Less

"Since 1909 the American farmer has been receiving a constantly lesser percentage of national wealth," the rail chief asserted. "He has been overwhelmed with debts and service charges on debts. He has not been able to buy or develop his property as he would like to.

"If the farmer becomes prosperous he offers the greatest potential market for manufactured goods and his purchases will make industry prosperous.

"He cannot become prosperous nor can all our people have more wealth distributed among themselves by an economy of scarcity in the form of nonproduction. A program of diversification and utilization is not spectacular nor rapid, but it will build a permanent farm economic prosperity.

perity, from the farm and the ranch, from the forest and the mine. Without these every street would be silent, every office deserted, every factory fallen into disrepair. And yet the farmer does not stand upon the same footing with the forester and the miner in the market of credit. He is the servant of the seasons. Nature determines how long he must wait for his crops, and will not be hurried in her process. He may give his note, but the season of its maturity depends upon the season when his crop matures, lies at the gates of the market where his products are sold. And the security he gives is of a character not known in the broker's office or as familiarly as it might be on the counter of the banker."

Congress authorized the President of the United States to appoint a Commission (known as the United States Commission) to investigate and study rural credit systems in European countries, and appropriated public moneys for the expenses of the Commission. The Commission was duly apointed and its members, together with a clerical staff, made extensive investigations in Germany, Italy, Hungary, Austria, Russia, Denmark, Belgium, Holland, France, England, Wales, Scotland, and Ireland. The report of this Commission which was submitted on January 28, 1914, afforded the foundation for our present farm loan system, which is based largely upon the rural credit systems of Europe, particularly that of Germany. This report indicates that the financing of our farms is a national and Governmental problem. The Commission said:

"Agriculture has been the one great national industry which has been without organization and has been absolutely helpless before the wonderful growth of our Nation. *Therefore the financing of our farms has become a national problem.* * * * This can be done only by wise and patriotic legislation. Farm securities must be honored by Nation, by State, and by individual." (Italic ours.)

The banks of the Federal farm loan system were "created for public and national purposes." Their creation was not authorized for private purposes or for their own sakes. They were called into existence to accomplish the important national purposes described in the title of the Act, to wit:

> "To provide capital for agricultural development, to create standard forms of investment based upon farm mortgages, to equalize rates of interest on farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Millions of dollars of public money are appropriated annually to aid and promote agriculture on the ground that it is for the general welfare. Fostering our greatest basic industry has always been considered a public function. The joint stock land banks and the Federal land banks were created for the purpose of enabling farmers to carry on their operations which are "essential to the general welfare." Senator Thomas J. Walsh in an address entitled the "Federal Farm Loan Act" (Senate Doc. 524) delivered before the Ohio State Bar Association on July 6, 1916, said:

> "It is quite obvious from the bill itself, as well as from the prevailing conditions, of which notice may be taken, that the primary consideration upon which Congress acted was * * * to afford facilities to citizens engaged in the basic industry of agriculture to secure credit with which successfully to carry on their operations *so essential to the general welfare* * * *." (Italics ours.)

The Federal farm loan system was inaugurated by President Wilson with a public address calling the attention of investors to the soundness of the securities

issued under the Act. The bill was signed on July 17, 1916, in the presence of a large number of Senators, Congressmen and representatives of farmers' organizations, including the National Grange, the Farmers' Educational and Co-operative Union, the Farmers' Society of Equity, the Ancient Order of Gleanors, the Farmers' National Congress, and the National Council of Farmers' Co-operative Association. Just before signing the measure the President made a short address pointing out the benefits which he believed both farmers and investors would enjoy under its operation.

Said President Wilson:

"On occasions of this sort, there are so many things to say that one would despair in saying them briefly and adequately, but I can not go through the simple ceremony of signing this bill without expressing the feeling that I have in signing. It is a feeling of profound satisfaction not only, but of real gratitude that we have completed this piece of legislation, which I hope will be immensely beneficial to the farmers of the country.

"The farmers, it seems to me, have occupied hitherto a singular position of disadvantage. They have not had the same freedom to get credit on their real estate that others have had who were in manufacturing and commercial enterprises, and while they have sustained our life, they did not in the same degree with some others share in the benefits of that life.

"Therefore, this bill, along with the very liberal provisions of the Federal Reserve Act, puts them upon an equality with all others who have genuine assets, and makes the great credit of the country available to them. One can not but feel that this is delayed justice to them, and can not but feel that it is a very gratifying thing to play any part in doing this act of justice.

"I look forward to the benefits of this bill, not with extravagant expectations, but with confident

expectations that it wil be a very wide-reaching benefit, *and incidentally it will be of advantage to the investing community, for I can imagine no more satisfactory and solid investments than this system will afford those who have money to use.*

"I sign the bil, therefore, with real emotion, and am very glad to be honored by your presence and supported by your feelings. I have no doubt in what I have said regarding it." (Italics ours.)

Evidently President Wilson considered the farmer a good credit risk! And justly so. He went through a panic for 14 years before Congress gave him the same relief it had hastened to give commerce after 3 years of depression.

In "The Agricultural Situation" for January 1, 1935, issued by the Bureau of Agricultural Economics, on page 18 is a table showing farm mortgage loans to farmers since 1929 by various lending agencies. This shows a decrease in farm mortgage loans to farmers by 39 life insurance companies, of $587,000,000.00 from 1929 to November of 1934; a decrease by banks of $122,000,000.00, and a decrease by joint stock land banks of $342,000,000.00, leaving outstanding only $285,000,000.00 by such agencies. On the other hand, Federal Land Bank loans have increased approximately $600,000,000.00, the Land Bank Commissioner's loans $587,000,000.00, Federal intermediate credit bank loans of various types and regional agricultural credit agency loans, including emergency crop loans, approximately $425,000,000.00.

As some indication of the extent of Federal refinancing, we direct the court's attention to the following extract from a pamphlet put out by the Farm Credit Administration, "Financing Agriculture in 1934," page 6:

"many instances, however, loans available from the Federal

land banks were not sufficient to refinance the burden of debt which had accumulated during the depression. Furthermore, the Federal land banks do not make loans on farms or in areas subject to special hazards. To provide for loans where these special risks were involved and to refinance first-mortgage loan, a fund of $800,000,000 was made available for making Land Bank Commissioner loans. Such loans are made upon the security of either first or second mortgages on real or personal property and may not exceed $7,500 to any one farmer. The amount of the mortgage to the Land Bank Commissioner, together with all prior mortgages or other evidences of indebtedness secured by the farm property, may not exceed 75 percent of the appraised value of the property.

PROGRESS MADE IN HANDLING APPLICATIONS

From May 1, 1933, to December 31, 1934, the Federal land banks received 905,299 applications, amounting to more than $4,100,000,000. As of December 31, 1934, 411,341 applications, or 45.2 percent of the total, including 3,844 applications pending on May 1, 1933, had resulted in closed loans and 76,108, or 8.4 percent, were pending as approved loans which had not as yet been closed. In addition, 166,252 applications had been approved, but later were canceled or withdrawn, principally because the applicant could not obtain the cooperation of his creditors in working out his debt problem or because he had worked out his debt situation without the necessity of refinancing. In all, 653,701 applications, or 71.9 percent of the total number received, had been approved for loans prior to January 1, 1935. Of the remainder, 197,812 were rejected, 26,471 were canceled or withdrawn before approval, and 3,159 were in progress through the banks but had not reached the loan committee on December 31, 1934.

The 411,341 applications closed as loans resulted in 225,477 Federal land bank loans totaling $870,505,803, and 350,393 Land Bank Commissioner loans amounting to $623,948,428; a total of 575,840 loans for $1,494,454,231.

HOW LOAN PROCEEDS WERE USED

Of the amount of loans closed, more than $1,000,000,000, or 71.8 percent, was used to refinance existing farm mortgages, 15.1 percent to refund short-term debts, and 3 percent to pay taxes (table 2).

Thus, 89.9 percent of the total amount loaned was used to liquidate prior indebtedness. The remainder was used to purchase stock in national farm loan associations; to provide working capital; to purchase, redeem, or repurchase land; to pay loan fees; to purchase equipment; and to repair or construct buildings and make other improvements.

MANY CREDITORS SCALE DOWN CLAIMS

Many farmers were so heavily indebted that maximum loans by the Federal land banks and Land Bank Commissioner were not sufficient to repay their outstanding obligations. In such instances, however, creditors were often willing to scale down the amount of their claims. In all, nearly 91,600, or 15.9 percent of all loans, were made to farmers obtaining scale-downs (table 3). The amount of principal scaled down amounted to approximately $75,000,000 or more than one-fourth of the prior debts of those farmers who obtained such reductions."

Now, in all these instances creditors agreed to be

humane, and got money, and the farmer stayed on the land! The Frazier Lemke Act is merely aimed at the "few unreasonable creditors!"

Yet, in the case at bar, the petitioner does not wish to do what other creditors throughout the nation, in a number of instances, have done. In this pamphlet it is also stated, p. 11:

CREDITORS HAVE BENEFITED

The farm debt refinancing program has had far-reaching effects. In addition to helping thousands of farmers to avoid the loss of their homes through foreclosure, funds made available through Federal land bank and Land Bank Commissioner loans have relieved the credit situation in other ways. Commercial banks have received more than $368,407,000 of loan proceeds in liquidation of mortgages and notes, thereby improving their ability to meet both withdrawals of deposits and demands for new credit. Other classes of creditors have strengthened their financial positions through the liquidation of mortgages, notes, and charge accounts. States and other taxing units have benefitted through the use of loan proceeds to pay taxes.

Every effort is being made to keep the farmer on his farm! !

A pamphlet put out by the Farm Credit Administration entitled, "Financing Agriculture in 1934," it is stated, page 14:

"Debt Adjustment Committees Formed

In the refinancing program, the operations of the local farm debt adjustment committee which were organized by the state governors in response to a suggestion by the Governor of the Farm Credit Administration have proved important. The principal function of these voluntary committees is to handle cases of excessive indebtedness submitted to them by either debtors or creditors with a view toward working out satisfactory settlements between debtors and creditors without resort to foreclosure. Committees have ben organized in more than 2,700 counties in 44 States and have successfully handled more than 40,000 cases involving approximately $200,000,000 of debts. The committees have been helpful to both creditors and

debtors and, since they serve without pay, deserve public support and encouragement for the good they have accomplished."

Under this law the Governor appoints the conciliation commission, consisting of three representative citizens, in each county of the state. These committees meet once a week for the purpose of attempting to harmonize the relations of debtors and creditors of the farmer. Under the Emergency Farm Mortgage Act of 1933, the Federal Land Banks have caused to be organized National Farm Loan Associations in every county in the state. This is typical of other states as well as Indiana. The purpose of these National Farm Loan Associations is to take applications and assist in refinancing farm mortgages. Thus a farmer who desires to refinance a mortgage on his farm, goes through the following stages:

1. He attempts to reach an agreement in the first instance, with the mortgage holder. Invariably he is told either to give a deed, or to apply for a Federal farm loan to refinance.
2. He then makes application to the National Farm Loan Association of the county in which he is a resident. This is forwarded to the Federal Land Bank having jurisdiction. That bank sends out appraisers. Ultimately the Federal Land Bank makes a commitment to the farmer, with certain conditions attached, such as "pay all debts", or, "pay liens against the land". The farmer then offers the amount of the commitment first to the mortgage holder. Usually the mortgage holder requests a reappraisal of the land in an attempt to squeeze out the last possible cent. Then comes the tug of war between the mortgage holder, who, oblivious of the fact that the Emergency Farm Mortgage Act made it mandatory upon the land banks to adopt the 1909-1914 standard as a basis for making loans, and thereby has created an arti-

ficial level for farm land prices, attempts to obtain the entire amount of the loan for itself. It takes the position that the loan is made on the land, and hence it is entitled to receive all of it. Such is not the fact, however. Loans of the Federal Land Banks are made on the farm plus the farmer. This is conclusively shown by the very deplorable policy of the Federal Land Banks in refusing to loan money to old women who own farms, and in the case of old men, in requiring that their children also sign the mortgage.

3. If the creditors can not harmonize, the National Farm Loan Association secretary, if he is onto his job, attempts to bring them together.

4. If the National Farm Loan Association secretary can't induce creditors to agree on the division of the booty, then the farmer files a complaint with the state county conciliation committee, who holds hearings. They hear evidence submitted on both sides, and make a recommendation, which, of course, is nothing more. In a vast majority of cases their efforts are unsuccessful. Frequently cases come several times before the county conciliation committees.

5. There is a state supervising conciliation commissioner who is a sort of trouble shooter. In certain cases he will add his personal efforts to the work of the committee. If he fails in harmonizing the various elements, then the farmer has only one recourse, and that is a petition under section 75 of the National Bankruptcy Act.

6. The procedure that counsel hergin from Indiana adopted, is, at the hearing on the section 75 composition petition, to make an offer to creditors based on the amount that can be obtained from the Federal Land Bank, plus other assets of the farmer. In no case has he been able to effect a composition. In fact, he is advised that out of the entire 279 cases which have been instituted in the Northern District of Indiana since the passage of the Frazier-Lemke law, that only three compositions have been effected. The experience in these cases

is that without exception, it is the large corporation mortgage holders who are unreasonable and obdurate. There are many cases in the writer's own personal experience where other creditors have agreed to completely wipe out their indebtedness so as to enable the debtor to peel himself down to the hide in order to offer everything to the greedy mortgage holder, in a last frantic attempt to save his farm. But without success.

7. Every attempt having failed, the Frazier Lemke petition is the last resort.

In "The Agricultural Situation" for March 1st, 1935, by the Bureau of Agricultural Economics, it is said on page 9:

"PRIVATE CAPITAL INVESTMENT IN AGRICULTURAL LOANS CONTINUE DECLINE IN 1934

Private capital, as represented by investments of life insurance companies, showed a smaller proportion in farm loans for the year 1934 than in any previous year. Twenty-five life insurance companies, having about 75 percent of the assets of all legal reserve companies, placed 1.6 percent of their investments in loans on farm property in 1934 as compared with 3.5 percent in 1933, and 10 percent in the years 1928-30. Investment in other real property loans also showed sharp declines.

Despite the proportionate decline in farm investments, the amount for 1934 slightly exceeded the sum so invested in 1933, owing to the pronounced increase in the total investments made by life companies as compared with the immediately preceding years.

The principal form of investment showing increases offsetting the losses in real-estate mortgages was that of Government securities which had increased to 77 percent in 1934 as compared with an average of 11 percent for the years 1928-30."

On page 10 at the top is shown the "Percentage Distribution of Life Insurance Investments, by Type, 1928-34." This is as follows:

PERCENTAGE DISTRIBUTION OF LIFE INSURANCE INVESTMENTS, BY TYPE, 1928-34

Compiled from weekly reports of 25 companies New York Evening Post and Wall Street Journal."

	Total	Farm property	Dwellings and business property	Railroad securities	Public utilities	Government securities	Miscellaneous securities
	Percent	Percent	Percent	Percent	Percent	Percent	Percent
1928 (6 mo.)	100.0	11.1	49.1	10.6	13.6	10.1	5.5
1929	100.0	8.7	43.3	8.4	7.4	11.3	20.9
1930	100.0	10.1	44.8	9.9	15.4	11.1	8.7
1931	100.0	7.6	36.5	10.3	20.4	20.1	5.1
1932	100.0	9.3	31.3	1.1	9.9	44.0	4.4
1933	100.0	3.5	3.7	3.5	6.5	80.4	2.4
1934	100.0	1.6	2.7	5.9	7.2	76.6	6.0

When it is considered that the statement has been made recently by an authority, that the decrease in values for the past year in the securities of public utility companies aggregates $3,000,000,000.00, and such investments in 1934 were 7.2 percent of the class of investments held by the largest investing group in the country, why should there be so much excitement over a bill that affects only 1.6 percent of the total assets of these companies, and yet means almost life or death to hundreds of thousands of such an essential portion of our population.

As an instance that nature frequently takes a hand in the agricultural depression, is the following news item concerning the recent sand storms, taken from the "Chicago Tribune" of March 24th, 1935:

"Fort Worth, Tex., March 23. (Special) Unless large scale protective measures are undertaken by the government, more than 75 million acres of what once was a highly productive agricultural area in the southwest will be reduced to a desert by soil erosion, caused by wind storms.

In the high plains area of Texas, Oklahoma, Kansas, Colorado, and New Mexico, hard winds and sandstorms have swept this spring in increasing intensity, stripping the top soil from millions of acres and bringing the spectre of impoverishment to farmers.

4 Million Acres Destroyed

H. H. Bennett, director of the federal soil erosion service, testifying before the house public lands committee, reported that wind erosion had destroyed 4,443,849 acres for further tillage and had done severe damage to 60,564,778 additional acres.

Discussing the need of a permanent soil erosion service, Bennett pointed out that the top soil had been washed off an additional 51,465,097 acres and that much of the land already had been abandoned."

The article continues:

"There has been three consecutive crop failures in the sand-swept area and farmers face a fourth. In 40 counties of the southern high plains region there are approximately 2,767,000 acres upon which no crop of any kind will be planted this year unless the government approves a program being advocated by leaders who realize the seriousness of the situation.

Good Land Now Waste

Thousands of acres that normally produced above average wheat crops now are sandy waste. Drifts of sand have been piled as high as barbed wire fences, destroying the strands. Where

wheat farms once abounded there remains only tufts of wild grass and sand banks.

So serious is the problem to them that 1,100 delegates from the five states in the area met last week in Dalhart, Tex., and asked the government to supply immediate funds to wage a fight against robbery of the soil by winds."

In the "New York Times" for Saturday, March 23rd, 1935, is the heading, "Great Dust Storm Threatens a Shift in Farm Program," and the article begins as follows:

"Washington, March 22. A major revision in the Federal Government's farm program impended today as a result of drought and dust storms in the Great Plains.

AAA officials and others concerned with land-use policies said privately that they saw in the present repetition of 1934 conditions a motivating factor that might force rapid purchase of millions of acres of land in the drought belt to undertake a vast soil erosion-prevention program."

But the 1934 Drought was no slouch.

In Webster, Kennedy & Company's review, a concern that specializes in joint stock land bank bonds, it is stated in their "Comparative Analyses" of September 27th, 1934:

"EFFECT OF THE DROUGHT

The importance of the drought and its effect on collections cannot be overemphasized. Twenty-four states were directly affected in varying degrees. Total damage to date is placed at five billion dollars. The drought helped raise commodity prices, yet this can reflect favorably only on those areas which entirely escaped the drought or where it was only a minor problem. In the states where crops have been almost completely destroyed the salvage will be pitifully small and the problems of the Joint Stock Land Banks loaning in those areas will be serious. The states most affected are.

NORTH DAKOTA AND SOUTH DAKOTA—all crops and livestock practically destroyed. 25% of the population in need of transplanting to better lands.

IOWA—southern portion: livestock almost complete failure—northern portion slightly better.

MISSOURI—literally paralyzed; corn crop is practical failure; pastures are barren; livestock must be shipped out of the State as fast as there is an outlet for it.

WISCONSIN—large area seriously drought-stricken, affecting especially pasturage and feed crops.

MINNESOTA—danger of dispersal of many small dairy herds seems inevitable.

NEBRASKA—pastures exhausted and lack of water serious problem. Corn almost complete failure.

KANSAS AND OKLAHOMA—fair wheat crop, but practically no corn; pastures gone except in

And we have seen estimated that the damage from the Great Drought of 1934 exceeded $5,000,000,000.00!!!

THE HONESTY OF THE FARMER

It is true that counsel writing this part of the argument comes from the corn belt, where he has personally observed the various phases of agricultural economics that are here discussed. And perhaps on that account it might be argued that his viewpoint is somewhat prejudiced. But in truth it is not. And every statement that is made can be corroborated by dozens, and even by hundreds, of instances in his own community. Neither his word nor that of isolated examples need to be taken. When the statement is made that the honesty of the farmer is proverbial, the court could well take judicial notice of that fact, but it is not necessary.

The various factors of the agricultural economic situation discussed herein have been much more comprehensively treated in a number of government publications, and particularly the attitude of the farmer towards his farm was especially noted in the "Fifteenth Annual Report of the Federal Farm Loan Board" for the year ending December 31, 1931, House Document No. 36. We wish to call to the court's attention the following extracts therefrom. Page 1:

"The great majority of the borrowers from the land banks have continued to meet the terms of their loans notwithstanding the low prices received for agricultural commodities. However, funds which many farmers had accumulated for paying current obligations and

mountains. Government purchase of livestock slowed down by market congestion.

NEW MEXICO, COLORADO, WYOMING AND MONTANA—dry farming and irrigated sections less seriously affected as they were better prepared for drought and recent precipitation helpful.

TEXAS—cotton averaging 70% of normal; costal regions, crops seriously damaged by storms. Panhandle country almost total failure. Range country badly

carrying on their operations have been tied up in closed banks, and the sources through which credit for these purposes would normally be obtained have been restricted by the commercial banking situation. It is the general policy of the banks to require the payment of maturing obligations, but when delinquencies occur to consider each loan in the light of the facts of the particular case and to institute foreclosure proceedings only when the borrower is not making an honest effort to meet his obligations or would not have any prospect of succeeding in doing so if given reasonable time. The banks have devoted special attention to collections and sales of acquired real estate in order that these problems may be dealt with as efficiently and intelligently as possible."

Another factor affecting the farmer is mentioned on page 5 with respect to the closing of banks. The report says:

"The decline in income without an equal reduction in necessary expenditures obviously reduced the ability of farmers to meet mortgage obligations from current income. In addition to this difficulty, in many instances funds which had been accumulated for the purpose of paying mortgage obligations have been tied up in banks which suspended operations. According to data compiled by the Federal Reserve Board, approximately 80 per cent of the banks which closed their doors during 1931 were in towns and cities of less than 10,000 population and represented, for the most part, country banks. Funds which farmers had on deposit in such banks naturally are not available for the purpose of paying operating expenses, or meeting obligations, until the banks are liquidated or reopened."

Still the farmer, with that indomitable industry and traditional integrity of his, carried on. The report continued, p. 5:

"Although, as indicated by these data, collections have fallen off, this reduction has not been as great as might have been expected in view of the loss of cash income and the unfavorable commercial banking situation. This record indicates a strong desire and determination on the part of borrowers to pay their debts and retain their farms. The fact that most families will exhaust every possible means of meeting payments before getting into a position where they are in danger of losing their homes is an important element of strength in land bank loans. Under the prevailing conditions, moreover, the efforts of many borrowers to retain their farm homes have been still further increased because of the unemployment situation in the cities and the difficulty in finding other means of earning a livelihood."

Some corroboration of the statement that the figures representing court foreclosures, do not even begin to tell the story of the number of farms that have passed into the possession of the mortgage holders, afforded

by the "Fifteenth Annual Report of the Federal Farm Loan Board." On page 6 it has a table which gives a summary of foreclosure proceedings "pending at beginning of period" and "instituted." Under the latter heads are included farms deeded directly to the banks by the borrowers. The figures are as follows:

In 1929, pending, 1,523, but instituted 4,756. In 1930, pending, 1,921, but instituted, 5,995, and in 1931, pending, 2,402, and instituted, 10,685.

On page 7 are the same figures for the joint stock land banks. Thus in 1931, they had pending 1,076 foreclosures, but there were "instituted" 5,916. Thus, roughly speaking, these banks acquired five times as many farms as they actually filed foreclosure proceedings against.

In this connection, statistics as to formal bankruptcies by farmers are of interest.

UNITED STATES DEPARTMENT OF AGRICULTURE
Bureau of Agricultural Economics
Washington, D. C.

January 16, 1935.

NUMBER OF BANKRUPTCIES AMONG FARMERS COMPARED WITH TOTAL OF ALL BANKRUPTCIES

(Cases concluded in fiscal years ending June 30)

State and geographic division	Total bankruptcies		Bankruptcies among farmers		Farmer bankruptcies expressed as % of all cases	
	1933	1934	1933	1934	1933	1934
	Number	Number	Number	Number	%	%
Maine	675	543	67	85	9.9	15.7
New Hampshire	101	141	13	10	12.9	7.1
Vermont	219	120	27	28	12.3	23.3
Massachusetts	2,278	1,786	21	20	.9	1.1
Rhode Island	256	183	4	3	1.6	1.6
Connecticut	1,263	1,400	32	25	2.5	1.8
New England	4,972	4,173	164	171	3.4	4.1
New York	7,865	7,955	219	185	2.8	2.3
New Jersey	1,894	1,607	20	27	1.1	1.7
Pennsylvania	4,151	2,474	275	208	6.6	8.4
Middle Atlantic	13,910	12,036	514	420	3.7	3.5
Ohio	5,540	5,623	644	443	11.6	7.9
Indiana	952	829	222	160	23.3	19.3
Illinois	4,903	4,737	815	527	16.6	12.1
Michigan	2,368	2,682	68	43	2.9	1.6
Wisconsin	1,475	1,508	271	211	18.4	14.0
East North Central	15,238	15,379	2,020	1,384	13.3	9.0

NUMBER OF BANKRUPTCIES AMONG FARMERS—(Continued)

State and geographic division	Total bankruptcies		Bankruptcies among farmers		Farmer bankruptcies expressed as % of all cases	
	1933	1934	1933	1934	1933	1934
	Number	Number	Number	Number	%	%
Minnesota	965	1,073	98	117	10.2	10.9
Iowa	1,211	889	561	395	46.3	44.4
Missouri	1,831	1,530	276	221	15.1	14.4
North Dakota	102	88	39	39	38.2	44.3
South Dakota	177	116	74	53	41.8	45.7
Nebraska	496	439	109	84	22.0	19.1
Kansas	583	334	120	74	20.6	22.2
West North Central	5,365	4,469	1,277	983	23.8	22.0
Delaware	108	58	42	18	38.9	31.0
Maryland	571	539	140	91	24.5	16.9
District of Columbia	191	195	0	0	0	0
Virginia	2,485	2,496	138	154	5.6	6.2
West Virgina	795	756	28	39	3.5	5.2
North Carolina	751	648	84	162	11.2	25.0
South Carolina	295	156	31	29	10.5	18.6
Georgia	2,382	2,069	124	195	5.2	9.4
Florida	550	325	14	10	2.5	3.1
South Atlantic	8,128	7,242	601	699	7.4	9.7
Kentucky	1,490	1,449	167	154	11.2	10.6
Tennessee	2,695	2,871	115	99	4.3	3.4
Alabama	3,421	2,024	167	100	4.9	4.9
Mississippi	563	353	45	46	8.0	13.0
East South Central	8,169	6,797	494	399	6.0	5.9
Arkansas	571	373	70	50	12.3	13.4
Louisiana	637	577	54	74	8.5	12.8
Oklahoma	969	578	48	41	5.0	7.1
Texas	1,641	942	199	164	12.1	17.4
West South Central	3,818	2,470	371	329	9.7	13.3
Montana	207	119	40	20	19.3	16.8
Idaho	136	89	34	34	25.0	38.2
Wyoming	99	66	5	9	5.1	13.6
Colorado	384	396	43	29	11.2	7.3
New Mexico	47	56	4	8	8.5	14.3
Arizona	83	46	6	9	7.2	19.6
Utah	292	212	35	21	12.0	9.9
Nevada	23	24	0	1	0	4.2
Mountain	1,271	1,008	167	131	13.1	13.0
Washington	950	794	88	37	9.3	4.7
Oregon	907	857	44	40	4.9	4.7
California	4,175	3,608	177	123	4.2	3.4
Pacific	6,032	5,259	309	200	5.1	3.8
UNITED STATES	66,723	58,833	5,917	4,716	8.9	8.0

With reference to the disadvantages of the mortgage holders operating the farms, and thus showing that it is better that the farms remain in the possession of the owner, is the following observation from page 29 of

the "Fifteenth Annual Report of the Federal Farm Loan Board":

"The banks have found from experience that they are not in a position to operate acquired farms on a basis which yields satisfactory returns above necessary expenditures. The farms which they acquire, as a rule, are scattered over their entire district and in such circumstances the cost of operation and supervision is high. Moreover, the returns from a farm operated from a distance rarely are as high as when operated by an interested owner living on or near the farm and giving its operation close and constant attention. Since the banks have bond interest and operating expenses which must be met, it is of the utmost importance that they avoid an accumulation of low-earning or non-earning assets. It is not the policy, however, to dump farms on the market indiscriminately, but to make sales only when satisfactory prices can be obtained."

The United States Department of Agriculture in its release for March 15th, 1935, entitled, "The Price Situation, March 1935", says, page 2:

"Business Conditions. Industrial activity reached a peak in the first half of February after a 5-month advance and then declined slightly so that industrial output made about the usual seasonal change from January to February. The marked advance in automobile production and allied industries since December has been earlier than usual, which accounts for the exceptionally rapid rise in the seasonally adjusted indexes of industrial output. While industrial activity on the whole is still increasing, the increase in recent weeks has been slackening. Present indications point to some recession in the seasonally adjusted indexes of industrial activity durig the spring months unless those lines of activity which have as yet shown but little improvement such as building, and replacements by railroads, increase materially in the near future."

The farmer is not in good shape. One may look at the relatively high prices of the various grains as compared to two years ago, but what good are they if the farmer has nothing to sell? We respectfully direct the court's attention to the following review issued by the United States Department of Agriculture in its publication, "Crops and Markets." For instance, the following extract from page 1 tells the story:

"General Crop Report as of December 1, 1934. Completion of the fall surveys of acreages harvested and production secured confirms earlier indications of an unprecedented loss of crops from drought. Taking the country as a whole, crop production, as estimated by the Crop Reporting Board of the Department, was about 22

percent less than production last year and 32 percent less than the average production during the previous 10 years. Chiefly because of the drought and the measures taken to control production, the acreage in crops harvested, estimated at 288,608,000 acres (excluding fruits) was below the acreage harvested last year by about 40,500,000 acres or 12 percent, and below the average acreage during the previous 10 years by nearly 19 percent. It was probably the lowest total acreage harvested in more than 30 years. On this greatly reduced acreage some exceptionaly low yields were secured, yields of field crops averaging about 15 percent less than last year's low yields and about 20 percent less than average yields during the previous 10 years.

The estimates for some of the crops are so unusual that it is difficult to make comparisons. The total corn crop as harvested for all purposes is estimated as equivalent to 1,881,000,000 bushels, making it the smallest crop since 1881 and the quantity of corn actually harvested as grain is estimated at 1,107,887,000 bushels which was probably below the quantity husked in any season in 60 years. However, such an unprecedented area of corn failed to produce grain that the acreage cut for fodder is believed to have been more than twice as great as in any previous year. The estimate of the oat crop has been revised downward about 3 percent and is now placed at 529,000,000 bushels, indicating the smallest oat crop since 1881, and the estimate includes a considerable quantity of grain so poor that it is bein fed without threshing. The estimate of barley production now stands at 119,000,000 bushels which is far below production in any other season since 1900. The estimate of wheat, practically unchanged at 496,000,000 bushels, is only 6 percent below last year's short crop, but it is almost 20 percent below production in any other year since 1904, and it is the smallest total since 1890. The various grain sorghums, which have been life savers for many farmers in previous years of drought, have this season produced only about half as much as in the driest of recent years. The hay crop was a fourth smaller than any hay crop cut in the last dosen years or more and theyield of sweet sorghum forage also was low. In part of the drought area, the very large tonnage of Russian thistles, weeds, and corn fodder salvaged will partially offset the acute shortage of hay, but in some areas there is an acute scarcity of all roughage. The hap problem is further complicated by an acute shortage of grass and clover seed. The crop of timothy seed was particluarly short, production being estimated at 262,000 bushels compared with 835,000 bushels in 1933, and 1,406,000 bushels in 1932.

Beginning on page 510 of this publication, are the monthly prices for various grains since 1908. The statistics are too lengthy to reproduce in detail, but we will take just the first column on corn, where the prices are shown from 1908 to 1934, the first column being for October 15th of each year. From 1908 to 1916, the farm prices of corn fluctuated between 67.9c and 83.6c a bushel. During the war corn got up as high as 160.6c a bushel. In 1921 it was 46c a bushel. In 1930 it had gotten back to 81.9c a bushel, but in 1931 it was 33.4c

a bushel. In 1932, 21.6c a bushel, and in 1933, 38.8c a bushel. In 1934 it is given as 76.7c a bushel, but by referring to page 497, it will be seen that the crop of corn for that year was only 1,381,000,000 bushels, or a crop less than 50 percent of normal.

On page 462 of the publication is given the crop production for the United States. It will be seen that since 1919, with the exception of the one year of 1930, the corn crop has been pretty consistently around twenty-two hundred million bushels, and yet the farmer is expected to be able to pay his debts 100 cents on the dollar.

We have said that the farmer works hard. Perhaps that sounds like a truism. It is a matter of common knowledge, but what isn't a matter of common knowledge, is the low return that the farmer usually obtains for his labor.

In Circular No. 309 the Farm Real Estate Situation 1932-1933, the Department of Agriculture says, p. 40:

"As the year 1932 progressed, the problems of indebted farmers and their creditors increased. Shrinking incomes meant increased delinquencies, and these in turn resulted i more foreclosure proceedings. In many instances it has been reported that creditors have felt that under the circumstances the rights of both parties would be more nearly protected if foreclosures were not pushed, but debtors given a chance to work out. The fact that the indebted farmers themselves normally would be able to operate the farms as efficiently as the average tenant who might be secured, together with the further fact that in numerous cases if the property were forced on the market it could not be disposed of for the face of the mortgage, has probably led to this conclusion."

On page 47 of the bulletin, it is stated:

"In Iowa an investigation reported that corporate holdings of land in 54 counties studied amounted, in the first quarter of 1933, to 1,382,920 acres, or 7.2 percent of all land in farms in these counties. Over 95 percent of this total was held by financial institutions, and the remainder was held by colleges and miscellaneous corporations.

In general, the concentration of corporate-owned land was greater in counties with low value per acre than in counties with higher-valued land.

Of the total corporate-owned land, insurance companies held

47.8 percent, deposit banks (including closed banks) held 22.5 percent, land-investment companies held 11.7 percent, the joint-stock land banks 8.2 percent, mortgage companies 2.4 percent, and the Federal land banks held 2.8 percent."

On page 62 it stated:

"Despite these efforts, it has not been possible to reduce debts as rapidly as farm values have declined, and the lag in debt adjustment incident to the shrinkage of more than one third in farm values during the 3 years 1930-33 has increased the number and proportion of mortgaged farms having high ratios of debt in relation to the new values. A widespread tendency among creditors toward postponement of payments and of leniency toward borrowers has not prevented an increased number of cases of forced liquidation following the rise in delinquency and the disappearance of equities, as evidenced by foreclosure, forced sale of property, or voluntary surrender of title."

It is further said, p. 62:

"In the field of short-term farm credit, the year was featured by banking difficulties and the use of emergency credit in larger proportions than in any previous year. The closing of many rural banks during the concluding period of 1932 and the early months of 1933 was followedby the bank holiday of March, which left more than 3,000 banks, mostly in the rural districts, closed or operating under restrictions. These difficulties stimulated the creation and expanded activity of Government-sponsored credit agencies. Outstanding advances of the regional agricultural credit corporations, intermediate credit banks, and crop-production loan offices amounted to $375,000,000 in August 1933.

On page 63 it said:

"The year witnessed the enactment of a number of measures aimed at relieving debt distress and improving credit facilities. Acts of various State legislatures directed toward securing a stay of foreclosures for farmers temporarily unable to meet their obligations have restricted the number of formal court actions instituted to take possession of property. In several States voluntary local committees were formed to assist distressed borrowers in reaching such agreement with creditors as seemed calculated to assure mutual protection and fair treatment of all interests. An amendment to the National Bankruptcy Act approved March 3, provided for the appointment of debt conciliation commissioners by the Federal district courts, upon petition of 15 farmers from a given county. After prescribed hearings the court may approve any composition or extension of agricultural indebtedness agreed to by creditors representing a mapority in number and amount. Legal proceedings against property may not be taken while cases are under consideration or during the life of the agreement. Secured creditors including lenders on real estate are not disturbed in their claims save with respect to the time and method of collection. The new law has been used extensively in adjusting debt difficulties in some areas, its facilities having been used by several hundred Utah farmers, for example.

The Federal Government enacted comprehensive measures relating to both long- and short-term credit. The Emergency Farm Mortgage Act in addition to reducing interest rates temporarily on

loans by the Federal land banks waived all payments on principal for the 5 years following July 11, 1933, and authorized direct loans to farmers where national farm-loan associations do not provide accommodation. Authorization was given for the issuance of $2,000,000,000 of 4-percent bonds guaranteed as to interest by the Federal Government, such bonds to be offered in exchange for mortgages or sold to obtain proceeds for making new loans. Provision for second-mortgage loans not exceeding $5,000 each and bearing 5 percent interest was authorized from a fund of $200,000,000 made available by the Reconstruction Finance Corporation for cases of debt settlement in which the total obligations of the borrower do not exceed 75 percent of the value of the farm property.

The Farm Credit Act of 1933 authorized the creation of regional credit corporations to be established in each of the 12 Federal land bank districts to assist in organizing and financing of local production-credit associations. Twelve banks for cooperatives are to be similarly established for the purpose of financing farmer's cooperative associations in the respective districts, while a central bank for cooperatives is to function in Washington for cooperatives operating on a national scale."

The Bureau of Agricultural Economics has issued a bulletin entitled, "Income from Farm Production in the United States 1933." On page 3 is a table in which is given the "Return to capital and management as percentage of operators' net capital." Up to 1929 the farmer received a return of a trifle over 3 percent. In 1930 he lost .7 percent. In 1931 his return was —2.8 percent. In 1932, it was —4.2 percent, and in 1933, he got a return of 1.9 percent. What other business on earth could exist under such conditions?

A press release of the Farm Credit Administration for publication November 15, 1934, Press Service No. 6-61, is entitled "Farms Sell at Higher Prices." In this bulletin it is said:

"The average sale price per acre of land sold by the banks from January 1 to September 30 this year shows an increase of 20 per cent compared with prices received during the same period in 1933. Land acquired by the banks over a period of years sold for an average price of $20.01 per acre during the nine months of this year compared to $16.65 in the corresponding period last year. An increase in the average sale price was reported from every land bank district in the country."

Hence, it would certainly appear as if the estimate of 10,000,000 acres taken over in the grain area was very low. We have figured this on the basis of $60.00

an acre. It is true that the figures used are for total value of all farms taken over, and in some instances include other real estate. Yet the companies taken represent only one-third of the total assets of all insurance companies.

And the division used, $60.00 an acre, is three times as high as the average value of farms sold by the Federal Land Banks.

Hence, we believe our estimate, or "guess" if you will, that the large mortgage holders must have acquired at least 10,000,000 acres of farm lands in the grain belt, is very conservative.

On the other hand, it is for the companies which are commonly known to have made their principal commitments in the grain belt. As we have stated, the real truth can only be developed by a Congressional investigation, but we can not help but believe that our estimates are low rather than high.

THE FARMER'S INCOME

We do not intend to annoy the Court with an endless array of statistics as to the part the farmer plays in the nation, even under these highly mechanized times and this age of technocracy.

Neither is it necessary to weary the Court by again reminding it that this nation was founded by farmers, defended by farmers, and preserved by farmers. There is not a state in the Union that could exist for 30 days if the farming population was eliminated.

There is not a state in the Union of which the major portion of its area is not devoted to agricultural pursuits.

In 1870 those employed in agriculture constituted 53 percent of the total working population, and farmers

received about 26.5 percent of the national income. In 1900, 36 percent were gainfully occupied in agriculture, and its share of the national income was about 21 percent.

In 1900 out of an entire population of 90,000,000, there was a farm population of 32,000,000. In 1932 the entire population had increased to 125,000,000, and the farm population had decreased to 31,000,000. Yet perhaps the relative importance of the farm population increased, as the necessity for feeding the teeming millions grew.

Foregoing facts from "*The Agricultural Situation*," Volume 19, No. 2, February 1, 1935, Department of Agriculture, page 7.

The national income, if defined like realized income, from the production of goods and services, amounted to $26,400,000,000 in 1900, $79,700,000,000 in 1929, and $51,900,000,000.00 in 1934. The amount attributed to agriculture is about $5,000,000,000.00 in 1900, $8,300,000,000.00 in 1929, $5,300,000,000.00 in 1934. However, it is estimated that about $2,500,000,000.00 should be added to the foregoing figures, as representing the farmers' income from other sources, in order to arrive at his total gross income.

Bulletin, *supra*, page 6, 8.

In the two bulletins issued by the Department of Agriculture and printed in the appendix, is found a comprehensive and careful survey of the farm situation. But really table 2 from the bulletin of the Bureau of Agricultural Economics for February 1, 1935, tells the entire story.

Table 2.—AGRICULTURE'S SHARE OF NATIONAL INCOME 1909-34

Year	National income (Million Dollars)	Contributed by agriculture (Million Dollars)	Contributed by agriculture Per cent	Year	National income (Million Dollars)	Contributed by agriculture (Million Dollars)	Contributed by agriculture Per cent
1909	26,430	4,988	18.9	1922	57,926	7,300	12.6
1910	28,024	5,218	18.6	1923	65,949	8,026	12.2
1911	28,376	4,815	17.0	1924	68,461	8,325	12.2
1912	30,358	5,294	17.4	1925	73,067	9,089	12.4
1913	31,909	5,133	16.1	1926	74,954	8,214	10.9
1914	31,669	5,081	16.0	1927	76,007	8,371	11.0
1915	33,083	5,488	16.6	1928	77,291	8,109	10.5
1916	38,884	6,631	17.1	1929	79,702	8,254	10.4
1917	46,575	9,188	19.7	1930	72,890	6,320	8.7
1918	54,784	11,205	20.5	1931	60,790	4,659	7.7
1919	59,550	12,182	20.5	1932	47,900	3,582	7.5
1920	65,928	11,057	16.8	1933	46,030	4,557	9.9
1921	55,430	6,967	12.6	1934	51,920	5,287	10.2

In circular No. 309 of the Department of Agriculture for December, 1933, and also bound in the appendix, is a survey of the farm real estate situation. And as with the preceding table, the entire story is told in the table on page 11, which gives land values in Iowa, and shows their steady decline. We reproduce merely the first column, which gives the average value per acre of cash rental land. (Bulletin, page 11):

Year	Average value per acre of cash rental land
	Dollars
1921	236
1922	188
1923	170
1924	164
1925	154
1926	157
1927	149
1928	142
1929	140
1930	130
1931	114
1932	93
1933	70

The shrinkage in capital assets of the farmer meaning thereby their virtual elimination, necessarily must carry with it a debasement of morale. If a farmer owned 200 acres of land in 1921, which was mortgaged at $70.00 an acre, less than one-third its value, and hence a conservative loan, he would have an equity in his land of $33,200.00, with the security and the credit that such an accumulation would justly entitle him to. In 1933, he would be a pauper.

But this table does not begin to tell the story. There are any quantity of farms in Iowa that are selling for less than $70.00 per acre. Only a few months ago a friend of one of the counsel, purchased a farm of 600 acres in Boone County, Iowa, held by an estate, which for some reason was not eligible for a Federal loan, for cash, for $35.00 an acre. (Name will be furnished if desired). About a month ago the Heath farm, 11 miles Northwest of Lafayette, Indiana, and which has been described as the "best farm within 100 miles of Lafayette," was sold for $55.00 an acre.

The attached clipping from the Advertising Section of the Chicago Tribune, from March 17, 1935, is self explanatory:

Iowa

1,133 A. 3 SETS IMPROVEMENTS; FINE stock and grain farm; $20 per acre.

1,025 A. Iowa stock and grain farm, well located. 2 sets improvements. Price $35 per acre. Can accept part trade and part cash. R. Sondgrass, 319 Iowa Bldg., Des Moines, Ia.

IOWA—WELL IMPROVED STOCK FARMS. black land grain farms. Nebr. ranches. $3,000 to $8,000 cash, bal. 10 years. Lincoln Joint Stock Land Bank, Lincoln, Neb.

950 AC. BLACK CORN FARM—GD. BLDGS.

Worth $100 ac. Will offer short time at $35 ac.; cash. Address S. H. 95, Tribune.

Furthermore, these values mentioned in the bulletin, are in a sense, inflated, for another reason. The Federal Land Banks are loaning billions of dollars to refinance farms. The law makes them use the 1909-1914 standard of prices as a standard. Thus Benton County, Indiana, the eastern end of the corn belt, which sweeps eastwardly through Iowa and Illinois and ends about 15 miles Southeast of Benton County, is being loaned about $70.00 an acre on its farm land.

Now it is perfectly obvious that if a farmer has a farm for sale on which there is a mortgage of $70.00 an acre at 4½ percent interest, and he desires to sell it, and somebody wants to buy it, that such purchaser will pay him something for his perhaps mythical equity. And take a chance on being able to meet the interest. So, if he pays $15.00 an acre for the equity, which means only $3,000 to obtain possession of a 200 acre farm, the value of that farm is automatically raised to $85.00 an acre. But offer farm land for sale without such loans, and the result has been detailed.

Thus, the farmer has suffered a practical extermination of his capital assets, and a shrinkage of his income of about 50 percent, during the past 13 years.

What other industry, what other group, could have taken a beating such as this, and have been permitted to remain so long without relief?

Certainly not the highly organized mortgage holders, whose minions are ever vigilant, night and day, to protect their interests.

THE PROBLEM OF ESCAPE FROM THE DEPRESSION

In a talk by Reuben D. Cahn, delivered at the second annual conference on Current Problems, sponsored by the Chicago Tribune, Palmer house, Chicago and recently reprinted in the Chicago Tribune, the speaker said:

"The problem which I am to

discuss is, unfortunately, not academic. The depression is not something which happened a little while ago. It is still with us. Times right now are as hard as they have been in your lifetime. Do you desire some evidence of it?

1. Twenty-one million are on relief in this country. That is five times as many people as lived in the thirteen American colonies when they successfully revolted against King George. It is as many people as lived in the entire country in 1845. It is only slightly less than the population which stood by the Union in the Civil War. It is equal to the combined populations of Canada, Australia, and Ireland. It is more people than ever before were on relief in this or any other country.

2. In Illinois alone 325,000 families, or 1,200,000 persons are on the dole. That number is also record breaking. The aggregation of people supported by relief in Illinois is equal to the combined populations of four states—Vermont, Delaware, Wyoming, and New Mexico.

3. In good times the incomes of all the people of the United States, if spread evenly, would amount to $750 for each man, woman and child. In 1934 a similarly equal division of everybody's income in this country would give each one of us only $330.

4. Such of you as own real estate or mortgages or mortgage bonds or bank stocks would be willing to rise now and give testimony of the persistence of hard times. From this brief statement of our present adversities I think I will be convinced that the fellow who recently put up the sign 'Wasn't the Depression Terrible?' was a grim humorist. Yes, it was terrible! It still is! The escape from this depression is something which is yet to be accomplished."

IX

THE LEGAL ASPECT OF DEBTOR AND CREDITOR.

A.

HISTORICAL REVIEW OF BANKRUPTCY LEGISLATION.

The following discussion is rather hastily made, because of the shortness of time allowed, in order to permit this case to be considered by the court during the present session of Congress. For the historical review that is used, counsel can claim no credit. This must go in the fullest measure to the author of that remarkable treatise entitled "*A History of the Bankruptcy Clause of the Constitution of the United States of America*," by F. Regis Noel. It is "A Dissertation" published about 1916, submitted to the Faculty of Philosophy of the Catholic University of America in partial fulfillment of its requirements for the degree of Doctor of Philosophy. This scholarly historical review of Clause 4, Section 8, Article 1 of the Constitution, *replete with citations and references*, is unmatched in its field. It should be printed as a public document.

It was intended to file copies for use of the court, and it is with regret that we have just been informed that only a few are extant. We are endeavoring to obtain at least one for filing. Hence, the extracts from the "Dissertation" are more copious than would usually be the case.

The reflections of counsel, herein, are drawn from the experience and observations of one, who for a quarter of a century, has lived among, and been the friend and the confidant, of farmers, in one of the great agricultural communities of the country.

In the appendix are attached, in addition to other documents, two Government reports, which portray the condition of agriculture.

It will be seen, especially by referring to the phamphlet entitled "The Agricultural Situation," February 1, 1935, Volume 19, No. 2, of the Bureau of Agricultural Economics, table 2 on page 5, *that the depression in agriculture began in* 1921, *when agriculture's share of the national income decreased to* 12.6 *percent from* 20.5 *percent in* 1919, *and* 18.9 *percent in* 1909.

It has never exceeded the 1921 percentage in any year since then. In 1929 it was only 10.4 percent of the national income. And decreased from then to 7.5 percent in 1932. Even in 1934 it was only 10.4 percent.

Yet, in spite of these almost unbelievable figures, the number of farmer bankruptcies consistently declined up to 1932. See "*The Farm Real Estate Situation*, 1932-1933" in the appendix, pages 58, 59.

An endeavor is being made to obtain comparable figures for 1933-1934. We are informed this material is now in the Government Printing office and will not be released for about a month. Of course, these bankruptcies materially increased in 1933 and 1934.

The farmer is not only, as has been so often stated, to be the backbone of this country, but he is in truth, its heart.

This is a nation of farmers. Founded by farmers. Defended by farmers. And preserved by farmers.

Alexander Hamilton stated that:

> "*The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government.*"
>
> "*Secret Proceedings of the Federal Convention,*" p. 96.

Thus, one of the greatest of all Americans, placed agriculture first.

Yet the amazing thing is that the farmer has usually been the last one to be considered.

The Government publications attached to the appendix, show that farmers labored through the throes of a severe agricultural depression for thirteen years, before Congress passed a law affording to a class which should have been its *first concern* a similar opportunity to commence to reorganize itself. Because the Frazier-Lemke Act merely gives to the farmer an opportunity, somewhat similar to those afforded by sections 77, 77B, and 80, but with much more stringent provisions, such as payment of the full appraised value, and the menace of reappraisal, to reorganize himself, as the cited Amendments afford to commerce and municipalities.

But commerce was only in the doldrums for less than three years, when, with a fanfare of publicity that a great step forward was being taken to help combat the depression, such debt adjustment and reorganization provisions as section 77B, were passed.

And it was only proper that such legislation should become effective. For 2,500 years man has recognized that debt is a sad, and unavoidable attribute of economic life. And at the bottom of economic cycles, (usually following wars), the situation becomes acute.

And recovery cannot occur until debt adjustment is accomplished.

Noel in his introduction to his treatise, aptly says, p. 7:

"Charity, the capital characteristic of the legislation on bankruptcies, has been likened to a cloak which covers a multitude of sins. Debt's sad presence has been felt in all ages. The condition of debt is in so many cases attributable to an indissoluble chain of events from which the debtor can not by his own efforts escape. Recognizing this, the framers of the Constitution not only granted the power, but, according to some interpreters, ordered that a cloak be made to protect the debtor from the bitter winds of misfortune and the cruel assaults of his creditor. Therefore, by virtue of delegated authority, they decreed that such

protection should be provided and designated the tailor, the Congress of the United States, to whom they gave a monopoly. The cloak is to fit every insolvent debtor living under the American government, that is, to be of uniform application; but neither pattern nor material was specified."

In addressing the people of the State of New York in The "Packet" of January 22, 1788, James Madison, Noel, p. 5: "dismissed the discussion of the bankrupcy clause of the Constitution of the United States with the remark that, 'The power of establishing uniform laws of bankruptcy, is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie, or be removed into different States, that the expediency of it seems not likely to be drawn into question.'"

"The Federalist; a Commentary of the Constitution of the United States", edited by John C. Hamilton, Phila., 1865, Art. XLII, p. 336.

1.

BANKRUPTCY LEGISLATION IN FOREIGN COUNTRIES PRIOR TO THE CONSTITUTIONAL CONVENTION OF 1787.

Noel gives a detailed historical review of bankruptcy legislation concerning debtor and creditor in countries other than that of the United States. He says, p. 13:

> "During twenty-five centuries the lawgivers of the world have periodically legislated on this human relation. In primitive communities a formulated practice was unknown, but it is reasonable to suppose that satisfaction for a hopeless debt was secured by labor or some personally inflicted punishment. In harmony with the spirit of those ages we can be certain that it was cruel. In semi-civilized parts of the earth harsh treatment of debtors persists. It is well established that in Pegu and the adjacent countries of East India a creditor is given full sanction in disposing of a debtor, his wife and children. Extreme cases are recorded in which a debt was satisfied by the creditor violating with impunity the chastity of the debtor's wife. Indeed, it can scarcely be believed that only a half century has passed since America and England surpassed many other nations in cruelty in respect to their treatment of debtors."

Perhaps it is because, as will be developed subsequently, that laws on bankruptcy in the United States were extremely harsh up to 65 years ago, that sufficient time has not elapsed to eradicate from the minds of our modern creditors, archaic ideas such as the immediate distribution of property, or the punishment of debtors such as had existed for many centuries. Yet, even in days far removed in the dim vistas of the past, we find perception of the rights of the human brotherhood. In this historical review it is pointed out that (Noel, p. 15) the Athenian Draco is believed to have been responsible for the institution of the modern system of treating debt. It is recorded that, in his criminal code of B. C. 623, he was unusually harsh in his treatment of debtors. The purpose was to stimulate industry. He classified debt with murder and laziness as a capital crime. Thieves of pot-herbs and fruits and debtors were punished as severely as sacrilegious robbers and murderers. Draco considered the lesser offenses deserving of death, so there was nothing more severe for the most serious crimes. This rigor was somewhat abated when, instead of death as a penalty for debt, the unfortunates were compelled to cultivate and remain on the land the same as cattle and fixtures and to surrender their children to be exported as slaves.

> *Plutarch*, "*Lives*," s. v. "*Solon*," Clough's edition p. 128.

But it is interesting to note that it was less than 30 years later that Solon, in reviewing the tyrannical tables of Draco, *considered debt a misfortune*, rather than a crime, and mitigated the punishment of debtors. The court must excuse counsel if he pauses a moment here to philosophize.

Within the past few months The Equitable Life Assurance Society has filed a very large number of foreclosures in Benton County and surrounding counties. In a number of instances loans have been offered by the Federal Land Bank which would entail a very small loss on the insurance company. Consistently it takes the position it must receive its pound of flesh to the last ounce. In a hearing before Referee Burnett in the matter of Clem V. Hibbs,* we challenged the attorney for the Equitable to show one instance that he could point to where this company has effected one composition with a farmer. After considerable cogitation he mentioned one case in Illinois, and in that case the lienholder got payment in full through a manipulation of the various properties and the elimination of certain junior mortgages.

Returning to the great Athenian Solon, Noel continues his review by saying, p. 15:

> "By his decrees, Seisnethea, (Relief from Burdens) he abolished servitude for debt and forbade anyone to lend or borrow money on the security of the person of the debtor. He ordained that what debts remained should be forgiven, and for the future, no man should engage the body of his debtor for security; but the bankrupt and his heirs forfeited Greek citizenship, a penalty more deeply felt than the loss of life or liberty. For these wise laws, enacted about 594 B. C., the ages have accorded him the title, 'Benefactor of Men.'

Conditions at the present, while unusually severe, are not in effect, different from the throes which the world has often experienced in the past. For centuries there has always arisen the problem in times of economic stress, of how to pay the exacting creditors, when

*Cause No. 2224. (Hammond Div. 2, D. Ind.)

in truth, there was nothing to pay them with, and when also, as Judge Simons so accurately points out in his decision in the Court of Appeals, that the loss is taken. The loss to the creditor has been brought about by the economic cleaver. Thus, in the year 594 B. C., the great Athenian, Solon, coming into power during a period of severe debt and misery in Athens, owing to the severity of the Draconian laws, lessened the rate of interest on debts and increased the value of the pound from 73 to 100 drachmas.

Solon, Clough's Edition, p. 128.

It is interesting here to observe that the increase in the value of the pound from 73 to 100 drachmas, is rather parralel to the decrease in our gold dollar.

And this was nothing new. In fact, Didorus claims this principle was copied from the Egyptians.

History is replete with instances of the severity with which debtors are treated when the wealth of the country is combined and concentrated in the hands of a privileged few. And ultimately the people become weary of such an unjust situation, and change their form of government, generally attended with great disorder and frequently horrible retalintion for the wrongs that they endured. Wealth has usually been heartless. Creditors mighty. The French Revolution is a striking illustration not far removed from the present. The Maderan Revolution was brought about, it is said, because at that time 200 families owned 90 percent of the land in Mexico. Oddly enough, Francisco Madero was one of the great land owners, but like our own immortal George Washington, he was a patriot first and a creditor second. The figure 200 is cabalistic. We find it frequently used in the annals of the French

Revolution. It is also said that 200 families owned over 80 percent of the entire wealth of all the Russias. Where are they today? And as we will point out a little later in this discussion, our own country in its babyhood was on the verge of being wrecked by greedy creditors. A threat not removed until the wise fathers established and passed the bankruptcy law of 1800, thereby avoiding the various inharmonious remedies and excessive treatments that the states had been visiting upon their debtors. This was because a certain percentage of creditors are not only greedy, but unscrupulous. Wealth is power. It takes a well balanced human to use power wisely, whether the power be one of wealth or one of words. We have pointed out in our economic review how these greedy creditors foment unrest, not only by the human suffering to which they subject an honest debtor until he strips himself, but by the manner in which they attempt to ham string every human right he has by traducing his natural advocates, and frequently his public representatives.

At the time of Draco, Athens was in the hands of the rich. Plutarch in his "lives" S. v. Solon, Clough's edition, p. 128, says, p. 15, note, Noel:

> "All the people were indebted to the rich; and either they tilled their land for their creditors, paying them a sixth part of the increase, and were, therefore, called Hectimorii and Thetes, or else they engaged their body for the debt, and might be seized, and either sent into slavery at home, or sold to strangers. Some (for no law forbade it) were forced to sell their children, or fly their country to avoid the cruelty of their creditors; * * *"

It also, will be recalled that Rome was essentially a nation of creditors. A small but wealthy class. So

when the Romans came to deal with the relation of debtor and creditor, they went to Greece for their legislation, as they did in many other cases. And, hence, in 450 B. C., promulgated the "Laws of the Twelve Tables," which are alleged to have been "more Draconic than Draco," and described as having been "written in blood," especially (Noel p. 46) the terrible section *de debitore in partes secando*. This section empowered the creditors, as a final resort, to cut the debtor's body into proportionate shares. But it was found that even mighty Rome could not enforce laws such as this. And, hence, as Noel points out, they were probably never enforced. Eventually the Romans evolved something rather similar to our modern bankruptcy law, with the adoption about 325 B. C., of the lex Poetalia. This law prohibited contracts of usuary, and provided that a debtor, by swearing that his assets exceeded his liabilities and surrendering all his property, could escape all the hardships of the laws of the Twelve Tables, and maintain his freedom.

Noel says, p. 17:

"Caesar is credited with having promulgated the law *Cessio Bonorum*, a leading principle of modern bankruptcy laws. In his work on the *Civil War*, he relates that when dictator he permitted debtors to yield their lands in payment to their creditors at the valuation at which they were assessed before the war. *Cessio Bonorum* originally allowed the retention of the rights of a Roman citizen for the reason that the distress arose from a civil strife. Under it all citizens were exempt from imprisonment, but it did not discharge the debt or exempt future acquisitions."

At this period in the history of Rome the doctrine of discharge originated and it was gradually extended.

The motive which inspired the introduction of this legal principle was not commercialism, but a purpose to destroy one of the effects on private affairs of participation in a military campaign, an incident of nearly every war.

Noel says, p. 18:

> "As is usually the case with emergency measures, it was inadequate, was misapplied, and not affording permanent relief, we find that its provisions were not long observed. There followed great oppression of debtors, an abuse which caused numerous withdrawals to the Sacred Mount, and on account of the vast number of the debtor class, occasioned great alarm to the Republic."

Thus we find definitely recorded 3 centuries before the birth of the Saviour, instances that creditors oppressed their debtors. The question here is, have we progressed from that status, or are we sinking back into it?

A study of the historical review by Noel, which is far more complete than that contained in any treatise anywhere concerning the relation of debtor and creditor in bankruptcy, and a study of present conditions, irresistibly leads the thoughtful student to the following conclusions:

1. That the Gods of Greed are ever rampant in the soul of the creditor class.

2. That for centuries they have held in their iron grasp the making of the laws which govern their relationship. That it has taken centuries to pry one finger loose.

3. That the first step forward was made when the body of the debtor was released from bondage to the creditor, and as a natural concomitant, his family also physically released. That the next step forward oc-

curred when he was permitted to surrender his property to his creditors. The next step forward was when, as a reward for that surrender, he was discharged of his obligations. This feature was first recognized in the Roman law, "the first purely charitable treatment of debtors," the discharge. This was the code "Corpus Jurus Civilis," which provided that if a debtor yielded up all his property to his creditors, he should not be continued in prison. And there was also a provision that by swearing that he was unable to poy his debts, the debtor was then relieved from the payment of them.

"*The Institutes of Justinian*," Abdy & Walker, Cambridge, 1876, Noel, p. 19.

So that as a matter of fact, the world really has not progressed much, in treating the relationship of debtor and creditor, for many centuries. Not until the year 1933, because it is in that year that Congress, which has blazed the way for so many magnificent contributions to humanity, first established the principle that there was a time, and the time had now come, that the debtor could retain and redeem his property, through its usufruct, and thereby build himself back into a useful member of society. Build himself back into a useful citizen of this great Republic.

Too much emphasis can not be laid upon the historical review of the Roman legislation, because as Noel points out, that before the Roman legislation was established, in the commercial republics of Italy (Venice), the principles of that legislation had been carried to England, but the harsher features of the Roman law never became the law of England. This is perhaps due to the fact that during the Roman Occupation, and also during the Norman Conquest, there was little

commerce in England. Hence, during the Norman period, few enactments are recorded concerning the relation of debtor and creditor. In fact, few civil actions of any kind were brought during this period, although Noel points out that Glanvil records an action of debt and one of replevin, and, upon contest, trial by battle. And that the policy of England was to be an enlightened one, is shown by the fact that (Noel, p. 21) the Magna Charta, extorted from King John by the barons at Runnimede in June, 1215, provides that it is illicit to seize the lands and revenues of a debtor when his movable or personal goods are sufficient to pay his debts and he is willing to surrender them to his creditors.

Stubbs, "Select Charters and Other Illustrations of English Constitutional History from the Earliest Times to the Reign of Edward I," p. 298.

For many years English jurisprudence would not permit violation of personal liberty for debt; real property alone could be taken in satisfaction.

Benton, "Thirty Years in the United States Senate," I, 292.

At critical periods occur Explosions.

Human life appears to run on a chartered course. And yet at certain long periods, explosions occur. They are necessary, to change the direction of the rudder, because the mental and spiritual force of the peoples of the world needs a tremendous impact for even a temporary dent to be made upon its consciousness. Hence, the saying that there is only one genius born every hundred years in every line of endeavor. And in government, it appears that such an explosion only takes place after cen-

turies of evolution. Such was the Magna Charta. That was an explosion that rocked the souls of freemen, and the reverberation of that explosion will echo in their hearts and resound in their ears as long as mankind endures on earth. It was a symbol that freemen could triumph over privilege. When the Magna Charta was signed on the heath of Runnimede, the American Republic and every Republic that succeeded since then, had its moment of conception. The echoes of that explosion can be traced through the history of every nation of continental Europe. The next explosion was five and one half centuries later, with the Declaration of Independence. Life, liberty, and the pursuit of happiness are the purposes expressed in the document which founded this Republic, and the purposes which the Constitution of this nation was intended to safeguard. It was declared that there was conceived in the soul of man at the moment of conception, certain inalienable rights that no despot, physical, mental, or spiritual, had a right to impair or extinguish, and those inalienable rights were declared to be life, liberty, and the pursuit of happiness.

The empire of Britain also was to demonstrate to the world how a mighty empire would arise when the forgotten men could handcuff the Gods of Greed, and so restrain them as to permit a moiety of opportunity to those in the lowly places. And, hence, a mighty empire grew, on which today the sun never sets. Whose birds of commerce ceaselessly wing their way over the Seven Seas. Whose goods are consumed by the daughters of culture of the French Republic, and sought by the pigmies in darkest Africa. A mighty nation indeed. Solidified by a system of justice before which the king and the commoner stand with equal rights at the bar of the

court. An even handed justice which makes it worth while to bring suit in an English court to collect a debt of only $20.00. A sense of justice which makes it an honor for the rich and the powerful to act as magistrates, called here justices of the peace, and a sense of justice which makes those men oblivious to friendship and to every thing but the law of the land when they sit in the chair of justice. Only recently we read of one of these magistrates sitting in judgment on a neighbor who had been brought before him for poaching. A wealthy gentleman, member of an old and esteemed family, who could not resist the temptation of birds flying over his fence from a neighbor's land, and indulged in a pot shot. When brought before his life long friend, this magistrate said he had no harder task in all his life, but that the law of the land was specific, and his oath of office binding his conscience, he felt constrained to give the maximum punishment.

Such is England on whose possessions the sun never sets. Mistress of the Seven Seas, Whose sense of obligation to her citizens is so intense. Whose sense of justice is so keen. Whose loyalty to her citizens have been manifested so often, that the humblest British citizen can traverse the highways and the byways of the savage parts of the world, secure in the knowledge that wherever he goes, and whatever he does, so long as it is lawful, so long as he abides by the laws of the country where he is, the Union Jack enfolds him in an invisible mantle of protection. A nation that has endured and grown stronger and ever stronger for a thousand years. Again we say, *a land of unlimited justice but limited opportunity.* That is what has grown there from the explosion of the Magna Charta.

The second explosion; the Declaration of Independ-

ence, occurred in a land removed by 3,000 miles of ocean from its mother country. Yet that erstwhile province, with its Constitution, has managed in the short space of a century and a half, to build a mighty nation and a far more complicated civilization than history affords any record of. A country, comprising within its borders what was originally some 90 different nationalities, who inhabit 48 different states, each with its own laws, each with its own viewpoint, each functioning under its own law, and particular economic conditions, yet knit together, indissolubly, with one common purpose, with a common aim, functioning each to each in the closest possible human union, although separated by 3,000 miles of plains and mountains, bordering on the two greatest oceans of the world, and lying between almost the arctic on the North and the tropics on the South. Administering mandates, possessions, or geographic interests, in probably every meridian of the world. Comprising less than 8 percent of the population of the world, it owns 40 percent of the wealth. 80 percent of all the telephones of the world are in the United States. 90 percent of all the automobiles, including the Fords. Imperfect as is this government, it is still the most democratic, the most representative, the closest to the man and the state, than has yet been devised by the mind of man. It was created by the fathers of a country, of whose area over 80 percent was inhabited by Indians. To 90 percent of its area only a few untamed hearts had yet penetrated. Almost three quarters of a century after its adoption it still took 9 months to travel from its East coast to its West coast, where today the journey can be made in 11 hours. Yet that Constitution, that again we say, rightfully looms so large in the minds of the opposition, created by the

representatives of thirteen farming states, whose population were either voluntary or involuntary exiles, whose country consisted in truth of the untamed wilderness and the unharnessed waterfall, has served as a model of government, for nations with centuries of legal learning, centuries of artistic progress, centuries of political and social science, in back of them. That document has served as a model for every other free nation, which since then has sprung forth from the womb of the world, in every quarter of the globe. So we may well be proud of it. We may not be accused of being overly enthusiastic when we use that rather trite phrase, "immortal document," in referring to it. That constitution was the written climax of a struggle that freemen had engaged in for centuries. Ever since there has been such a thing as history, it has always recorded a struggle against the greed of the privileged. Some peculiar psychology appears to infest the minds of those who obtain power through the exercise of privilege, and the consequent garnering that seems a concomitant. Well did that great court in Mississippi, in *Henry v. State*, 39 So. 856, 893, 88 Miss. 343, say:

> A "constitution" is the magna charta of the people's rights, the fundamental law of the land, intended not for short periods of time, but for all time.

So having been in existence a period of time eight and one-half centuries less than the mother country, this nation has two and one-half times the population; three times the wealth, and more than three times the commerce. This nation, founded by a despised handful of *farmers*, has twice overcome the mother country in mortal combat. And significantly enough, on each occasion, decisively against almost overpowering odds,

triumphed over that pride and boast, that insurance of the mother country, the British navy. And finally, may it be said with all due modesty, that in her hour of need this Republic, founded by farmers, conceived by farmers, saved the mother country, 3,000 miles away, from destruction, not merely from conquest, but from absolute destruction, and yes, we can go one step further. We can truthfully say in the light of the evaluation of the past decades and the present, that we saved the world from a very hideous threat. Farmers founded this Republic in 1776. Farmers saved this Republic in 1812. Farmers preserved this Republic in 1861. And it is not too much to say, Farmers saved the world in 1917.

To what can be attributed the phenomenon that a handful of farmers could have founded a nation such as this, at whom the whole world stares goggle eyed with amazement. A nation that today is blazing the way for relief from this worldwide catastrophe, into which the unseen but terrific forces of nature have plunged us. This nation has been builded on one rock and that is *equal opportunity and liberty*. We have far outstripped the old world. Because, while justice existed there, the citizens had *only limited opportunity*. That is why, as this court has pointed out, and Judge Simons in his great opinion sapiently pointed out, has been the policy of this country in the distribution of the public domain, in the homestead laws, in the land grants, and in every way in the development of this country. In the mining laws. Go where you will. The commercial pulse of America has beaten to the heart throb of equal opportunity. As is pointed out, this nation was originally, and still is, a nation of farmers. Primarily, we are an agricultural nation.

There could not have been commerce if there had not

been the products of the land in back of the commerce. It had to be the products of the land which were to move in the ships, which were the origin of our commerce. It had to be the products of the land that moved to the market places of the early colonies. It was the products of the land that were brought to William Penn. It wasn't insurance policies and the bonds of joint stock land banks. It was hogsheads of tobacco. It was molasses. It was homespun. Not pieces of paper. It was something that the hand of man reached down into the earth and pulled out of it. It was something that the women, sitting by, the spinning wheel, with one eye on the children and one eye on the lurking Indian, with one hand on the spinning wheel, and one hand ready to grab the musket, made out of the products of the earth. And when this nation g[illegible] When the peasant immigrated from the lands of limited opportunity to the land of unlimited opportunity, and when he left behind him his Katrinka, or his Mimi, or his Lucy, and he came here to establish a home and to send for her later, he didn't come here to sell pieces of paper. He got a pick and a shovel and an axe and a musket. And the government gave him a piece of land, and he used the ax to clear it. And he used the shovel to dig a foundation for his home. And he used the musket to protect it. And after he had cleared the wilderness, and after he had built his home, he used his hands with which to wrest from that cleared land, with the help of Mother Nature, a product from her heart that he took into the market places, and he exchanged it for pieces of metal, and those pieces of metal he exchanged for pieces of paper, with which he brought his dear ones overseas to their new home. In this, their land. Our land of *unlimited opportunity* with *equal opportunity* to each and every one. And after they

were here and the years rolled by and the frontier was pushed back and the savage was tamed, and life became more complex, along came some bright soul, and he said, "The vicissitudes of life are many. Here, take some of the pieces of paper that came from the metal that came from the product that came from the land, and I will see that when you are gone, your loved ones can remain in this, their home." And so was born the first insurance policy of the United States. Quite a few steps removed from the land, and we wonder what those old pioneers would have done had they realized, had they dreamed, that a century later, after the Union that they twice defended, and once brother fought against brother to preserve, that the holder of those pieces of paper, five times removed from the land, sold to them to keep their children and their wives on the land, would come to their descendants and say, "Now you can't keep your land. Now your wives and your children can't stay on the land. Where you watched tiny sapplings grow into great towering trees. Where you have watched your house grow as your family grew. You can't stay there any longer. *We are not even going to give you a chance to try to stay there any longer.* When you mortgaged to us your land, you also mortgaged to us your heart. When you mortgaged to us your land, you mortgaged to us your right to equal opportunity. When you mortgaged to us your land you mortgaged to us your liberty." We wonder what the pioneers of those days would have said to that?

On page 22 Noel says:

> "Then, as in every age, laws of bankruptcies were passed in response to commercial necessity, and to the control of such laws the commerce of the world, to a considerable extent, owes its gigantic proportions."

The proposition of permitting a debtor to remain in possession of his property, is nothing new in the history of bankruptcy. The *Statute Merchant* and *Statute Staple* were practices which arose in pursuance of 13 Edward I, Stat. 3, c. i., and consisting in entering security before the Mayor of London or the chief warden of a trading town whereby the lands of a debtor were conveyed to the creditors until out of the rents and profits derived from the property, there was sufficient to satisfy the debt. The former was also entitled *Action Burnel*, from the place of its enactment. As statutes providing for the collection of debts, they are the earliest in English jurisprudence, having been enacted in 1283. The statute, *de Mercatoribus*, closely followed, enlarged and applied *Action Burnel*.

Noel, pp. 22, 23, giving references.

Blackstone points out that bankruptcy is a "compassionate remedy," but only as a remedy for the "industrious trader."

"Commentaries," Cooley's edition, II, 474.

Noel says, p. 27:

> "* * * every change in the laws was a response to the requirements of business. A little later was recognized the economic and social advantage obtained by expediting the return of the unfortunate trader to solvency and society."

It is nothing new for bankruptcy to recognize the rights of the debtor. Noel points out that this was done as early as the reign of Queen Anne, the change in the Bankruptcy Act at that time coming in response to a change in the national psychology regarding bankruptcy.

Noel says, p. 28:

> "Provision for discharge was included in the view taken by legislators during the reign of Queen Anne. At that time debt was not looked upon as a crime, as Englishmen of an earlier and quite frequently of the present age regard it, and for the first time the rights of the debtor as well as those of the creditor were considered in formulating a law. Upon giving up, without fraudulent concealment, all his effects for distribution among his creditors, the debtor was exempted from the exactions of the judge-made law whereby he might have been confined, even though in reality there was nothing to satisfy the obligations. * * * This act of 1706 also permitted the bankrupt to retain certain valuables, and is, perhaps, the origin of exemptions. Discharges were readily obtained, and allowances of three *per centum* to ten *per centum* were not rare."

The doctrine of voluntary bankruptcy was not recognized by the British government until the statute of 6 George IV, c. l., in 1825.

Noel points out in his conclusion to his historical review on bankruptcy legislation in foreign countries, that there has been a constant struggle between the debtor and creditor classes, and especially the greed of larger creditors. In his conclusion he says, p. 32:

> "It is obvious that the system discussed above is an evolution of beneficient principles and a development of procedure. It is the outcome of the struggle between the debtor and the creditor classes, for and against big commercial interests and with officialism."

2.

BANKRUPTCY LEGISLATION IN THE COLONIES

AND STATES PRIOR TO THE CONSTITUTIONAL CONVENTION.

The great colonizer, William Penn, sage of all time, made no more classical remark than that.

> "Governments like clocks go from the motion men give them and as governments are made and moved by men, so by them are they ruined too."
>
> Hazard, "Annals of Pennsylvania," I, 491.

And a worthy twin to this sage remark is his other statement, (Noel, p. 40):

> "The true design of all punishment is to reform, not to exterminate mankind."

So hence, as soon as a little commerce developed in the colonies, the blind greed of a small minority, oblivious of the fact that its welfare, was indefatigably linked to that of its fellow men, manifested itself, as it has in all periods, and in all countries.

Without becoming too didactic concerning the history of advantages of land owning, it might not be amiss to quote the following extract from Noel, p. 50:

> "On May 5, 1682, the celebrated 'Frame of Government of the Province of Pennsylvania in America: Together with certain Laws agreed upon in England by the Governor and divers Freemen of the aforesaid Province' contained the first specific legislation affording a remedy for debt. It provided that all lands and goods should be held liable for the payment of debts, unless there be legal issue, and then all goods but *only one third of the land.*"

And it might be of interest here to note that in 1683 the practice of the province of Pennsylvania originated the appointment of three appraisers to value the property of the debtor whose goods had been seized upon execution.

THE CONSTITUTIONAL CONVENTION OF 1787

As Noel points out the law givers of the world had been familiar with the principles of bankruptcy jurisprudence for more than eight centuries, and for practically 200 years the Anglo Saxon race had legislated for the remedy and relief of the commercial debtor and creditor, when the delegates to the Federal Convention met at Philadelphia May 14, 1787. Space does not permit even a concise abridgement of the review this great student gives of the trade and commercial conditions of the country at that time.

And in his review of the constitutional conference of 1787, Noel points out that the congressmen were then "more frequently laboring for the local than the general welfare," and says, p. 69 note:

> "Even in the Convention this particularism was regretable, for, Gouveneur Morris, who wrote the draft of the Constitution, remarked that, 'The States, he found, had many representatives on the floor. Few, he feared, were to be deemed the representatives of America.' Madison, 'Journal of the Constitutional Convention,' Elliot's 'Debates', (1845) vol. V, p. 291."

But it was recognized by the patriots of the Convention, that the central government had to be a strong government. That with respect to such subjects, especially as agriculture, commerce, and revenue, (Vide Hamilton), the power of the Federal government had to be supreme and free from any reservation of power in the states.

In citing from the "Secret Proceedings of the Federal Convention," page 96, Noel says, p. 92, quoting James Wilson:

"'The Declaration of Independence preceded the State constitutions. What does this declare? In the name of the people of these States we are declared to be free and independent. The power of war, peace, alliances and trade, are declared to be vested in Congress.'"

Mr. Hamilton replied:

"'*I agree to Mr. Wilson's remark. Establish a weak government and you must at times overleap the bounds. Rome was obliged to create dictators. Cannot you make propositions to the people because we confederated on other principles? The people can yield to them if they will. The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government.*'"

Note what Alexander Hamilton stated. "The three great objects of government, agriculture, commerce, and revenue, can only be secured by a general government." And thus, one of the greatest of all Americans, placed agriculture first.

Between the time of the effective date of the Constitution in 1789, and the passage of the first national bankruptcy act in 1800, insolvency laws of the different states were applicable. The description of Newgate prison, which consisted of an old copper mine in the hills, where at one time, more than a hundred were imprisoned and "fastened by their feet with iron bars, and by their necks with chains to beams in the roof", seems unbelievable, as does his description of other debtor prisons at that time. (Noel, p. 71.)

Showing that human nature, when oppressed by the burden of debt, does not change, we might refer to Noel's description of the conditions in 1786. He says, p. 72:

"Commerce and trade throughout all but a few of the States were at lowest ebb in 1786. Forty-two millions of dollars of war debt faced the Federal Government, while in all of the States the private debts were enormous. In Massachusetts alone they totalled one million, three hundred thousand dollars. Lawyers who attempted to collect claims were treated with violence, and the profession was held in the utmost contempt. Open and armed resistance was made to actions of distress. In Massachusetts an angry mob of over a thousand for many months impeded legislation and the procedure of the courts, insisting on the abolition of all debts and clamoring for equal land rights."

This description might well have applied to the situation in conservative Republican Iowa, as well as other states in the Union, in the year 1932.

Noel says, p. 72:

"Professor Beard reviews the operation of the *Articles of Confederation* in his contention that the *Constitution of the United States* was an economic document, 'originated and carried through principally by four groups of personalty interests which had been adversely affected under the *Articles of Confederation*: money, public securities, manufacturers, and trade and shipping, on the one hand as opposed to the farmer and debtor classes on the other, and adds the following in paraphrase. 'Small farmers were frequently in debt to other folks for land; there were rebellions in Massachusetts by Shays and a thousand followers, maintaining equal property rights and the enforcement of the Agrarian laws; disturbances in Rhode Island and New Hampshire and other northern States; the advocates of paper money were constantly agitating innumerable schemes for the relief of the debtor, as paper money, abolition of imprisonment for debt, laws delaying collections, and exemption laws, and those requiring creditors to accept land in lieu of specie at a valuation fixed by a board of arbitration.'

"The philosophy of the debtors was reflected in the writings of Luther Martin, a delegate from Maryland to the Convention, who disapproved of the *Constitution* because it stopped Agrarian legislation. He wanted the States to retain the right to issue paper money and also the power to annul contracts. Martin was a champion of the extreme States' Rights view, and was democratic and far advanced for his times in matters of Political Economy. His argument was for the retention of this power for times of great public distress or calamity, to enable the States for the preservation of the most valuable part of their citizens to pass 'laws totally or partially stopping the courts of justice, or authorizing the debtor to pay by installments, or by delivering up his property to his creditors at a reasonable and honest valuation.' Reviewing the past, he adds that, such power has been used to advantage in former years, and was likely to be more useful in the future. 'The principal cause of complaint among the people at large at the time of the Convention was the public and private debts with which they were oppressed.'

Noel in his review, continues, p. 74:

"Under the jurisdiction of the *Articles of Confederation*, the creditor classes resisted all schemes for the relief of these private and insurmountable debts, and they suffered considerable losses from the application of State insolvency laws. There was constant strife. The absence of laws protecting manufacturers in interstate and foreign dealings, lack of security in the Western Lands and contentions over their ownership, paper money, stay laws, pine barren acts, the derangement of the monetary system and coinage due to non-uniformity in standards which were, for the most part, foreign, at length turned the inhabitants to 'the relief of forming a new national government, so devised as to preserve the sacredness of contracts, emitting a safe paper money and so forth for the benefit and security of trade.'"

In further reviewing the Constitutional Convention, he said, p. 75:

> "The result of John Fiske's careful study of this period must not be omitted. He presents new and comprehensive views. Through the interruption of commerce and the extravagant issue of paper money during and subsequent to the Revolution, debt was prevalent among the States just prior to the Constitutional Convention. In 1780 Connecticut had wisely adjusted all relations between debtors and creditors. Massachusetts and Rhode Island, then preeminently maritime colonies, were not so fortunate. Shipbuilding, oil, fisheries, lumbering and the rum industry were all destroyed. Rhode Island had too long supported the enemy's troops. 'Nowhere, perhaps, was there a larger proportion of the population in debt, and in these preeminently commercial communities private debts were a heavier burden than in the somewhat patriarchal system of life in Virginia and South Carolina. In the time of which we are now treating, imprisonment for debt was common. High-minded but unfortunate men were carried to jail, and herded with thieves and ruffians in loathsome dungeons, for the crime of owing a hundred dollars, which they could not promptly pay. *Under such circumstances, a commercial disturabance, involving wide-spread debt, entailed an amount of personal suffering and humiliation of which in these kinder days we can form no adequate conception.... It tended to make the debtor an outlaw, ready to entertain schemes for the subversion of society.*'"

Also see Fiske, "*The Critical Period of American History*," 172.

This condition, it will be noted, is merely typical of that which exists today. And it was in this atmosphere that the Constitution was drafted.

In reviewing the diverse interests that sought to construe the Constitution after its passage, Noel says, p. 82:

"For many years after Rhode Island, the most recalcitrant of the States, had ratified the *Constitution* and it had become a part of the fundamental law of the land, a controversy was waged between the strict and loose constructionists as to whether the *Constitution* was a crystallized document *totidem verbis*, incapable of enlargement and construction, or a thing of life, a verdant stem able to bud and blossom in response to the harsh or gentle winds of time. Many contended that it was static, possible of only that interpretation which was in the minds of the originators, which in regard to this subject was thoroughly English. For, as Luther Martin said, 'We were eternally troubled with arguments and precedents from the British Government.' It is incontrovertible that for a model our forefathers looked across the Atlantic to the country whicIr they knew best. The English origin of the *Constitution* can be proved by comparison with the English statutes of the period, and a biographical sketch of the members of the Convention establishes beyond question that the English pattern was always before the framers. But 'the members of the Convention did not study the British statutes, nor examine judicial decisions, to ascertain the precise nature of the actually existing system of bankruptcy in England. Still less did the people of the United States trouble themselves with such inquiries.'"

Noel cites Webster, "Works," V, 7, in support thereof.

Noel's conclusion of his scholarly review of the Constitutional Convention can not be surpassed. He says, p. 84:

"The Convention which produced it was a parliament of wise men, who knew full well what they were about to do. Their motives and intentions are unmistakable. They realized the perplexities of the situation and confronted them with unprejudiced minds and with hearts determined to solve them honestly. In this spirit good institutions and

beneficial doctrines were woven into the fabric of the *Constitution* without regard to the source. They had all felt the oppressor's hand. Some, it had forced to migrate to an unknown land, others, it had forced to take up arms in selfdefense; and they were naturally inclined to incorporate liberal and wise provisions for the benefit of all classes in the basal law they were about to propose. Furthermore, they realized that 'society is ever in a state of flux'; but also that some land-marks are premanent.

"This Government is founded upon a compromise of interests, and it is illogical to suppose that it can not be adapted to the changing relations of those interests. To say that the bankruptcy clause of the *Constitution*, together with other clauses in similar circumstances, is incapable of evolution and adaption, will, if the principle be consistently followed, arrest all political growth and refute the truism, 'It is a wise generation that knows itself and its own.'. What has been said by Blackstone of the American *Constitution*, is applicable to this clause of the *Constitution*. 'Its source and lines of development stretch far back into the past,' and it is foolish to deny that what has a past can not have a future, but while it exists, must remain in *statu quo*. Calm reasoning will lead to the conclusion that the bankruptcy system of the United States, while a matter of special creation in Convention times, was never intended to be an inanimate section of American juristic life, but to be capable of enlargement and extension to accomodate the convenience and need of every citizen of a great commercial republic."

4

"THE CONGRESS SHALL HAVE THE POWER . . ."

Now comes the Constitution. Noel says, p. 85:

"The answer to the question, 'Wherein resides the sovereignty of the United States?' has always been the same. 'It cannot too often be insisted

that in the United States all political power resides in the people.' The main struggle over the regulation of bankruptcies centers on the *locus* of the sovereign power."

And Noel continues, p. 86:

"There are many opinions of eminent statesmen and lawyers which justify the above statement. As a general principle of international law, 'In the republican (form of government) the people in a body possess the sovereign power. And that this principle was known and applied is evidenced by the second article of the *Virginia Bill of Rights* of June 12, 1776," 'That all power is vested in, and consequently derived from, the people.' A learned judge analyzed the situation thus, 'Its (the government of the United States) powers are granted by them (the people), and are to be exercised directly on them, and for their benefit.' Daniel Webster argued in harmony with the provisions of the *Constitution* when he said, 'The National government possesses those powers which it can be shown the people have conferred on it and no more. All the rest belongs to the State governments, or to the people themselves.' "

And who were the people at the time the Constitution was signed? Practically all farmers.

With reference to the bankruptcy clause of the Constitution, Noel says, p. 98:

"From a constitutional viewpoint, there are two principles of the bankruptcy law which were the causes of contention; the endeavor to obtain uniformity of the laws, and the impairment of the contract by the discharge of the obligation without fulfillment. The power of the Congress was granted to it by the *Constitution* and the grant is founded on expediency. There are no limitations on the legislative department of the Government in regard to the impairment of contracts and the repudiation of debts except that of uniformity of administra-

tion, and those which the policy of the Nation or the general welfare imposes. This has long been generally admitted. Mr. Tyler, of Virginia, argued for the discretion of the Congress in his reply in the House to the assertion that it was the duty of that body in every instance in which the *Constitution* gave power, to exercise it. He said:

"The gentleman's position leaves us no alternative. Our discretion is taken from us—our volition is gone. . . . . Inasmuch as the Constitution confers on Congress the power to adopt a uniform system of bankruptcy,—according to his doctrine, we are not to enquire into the expediency of adopting such a system, but must yield it our support. . . . . What, sir, is the end of all legislation? It is not the public good? Do we come here to legislate away the rights and happiness of our constituents, or to advance and secure them? Supose, then, by carrying into effect a specified power of the Constitution, we inflict serious injury upon the political body; will gentlemen contend that we are bound by a blind fatality, and compelled to act? Sir, such a doctrine cannot be supported. . . . . The powers of this *Constitution* are all addressed to the sound discretion of Congress. You are not imperatively commanded, but authorized to act, if by so doing the good of the country will be promoted.'"

President Buchanan said on this subject:

"'. . . . . power and duty are very different in their nature. Power is optional; duty is imperative. The language of power is, that you may; that of duty, you must. The *Constitution* has, in the same section and in the same terms given to Congress the power to declare war, to borrow money, to raise and support armies, etc. Will any gentleman, however, undertake to say that we are under the obligation to give life and energy to these powers, by bringing them into action? Will it be contended, because we possess the power of declaring war or of borowing money, that we are under the moral obligation to embroil ourselves

with foreign powers, or load the country with a National debt?

"'Power, whether vested in Congress or in an individual, necessarily implies the power of exercising the rights of sound discretion. The Constitution was intended not only for us, and for those who have gone before us, but for the generations yet to come. It has vested in Congress ample powers, to be called into action, whenever in their sound discretion, they believe the interest of the happiness of the people require their exertion. We are, therefore, left to exercise our judgment on this subject, entirely untrammelled by any constitutional injunction.'" (Speech in the House, March 12, 1822.)

How classic is this expression, when we consider the decision of this great court when it said that emergency does not create power, but calls into being power lying dormant in the Constitution, ready to be exercised when the needs of the people demand it. The parts of the fundamental law which relate to bankrupteies are stated as definitely and explicitly as those which apply to the subject of naturalization.*

Noel says, p. 103:

"It is necessary to define the meaning of the words 'bankrupt' and 'bankruptcy' within the meaning of the *Constitution*. The conclusion early arrived at was that a law on the subject of bankrupteies, in the sense of the *Constitution*, is a law

*The judgment rendered in *Sturges vs. Coowninshield*, was distinctly confirmed in *Farmeos' & Mechanics' Bank vs. Smith*, 6 Wheat, 131; *Smith vs. Mead*, 3 Conn. R. 253; *Boaodman vs. DeFoocst*, 5 Conn. 1; *Rroosevelt vs. Ceboa*, 17 Johns 108, and *Kimbeoly vs. Ely*, 6 Pick. 451.

Ogden vs. Saunders was argued with unusual completeneba by eminent counsel and given months of study by the court. It was re-affirmed in *Blanchard vs. Russell*, 13 Mass. R. 1; *Hemstead vs. Read*, 6 Conn. R. 480; *Betts vs. Bagley*, 12 Pick. R. 572.

On justification of loose construction, cf. *McCulloch vs. Maryland*, 4 Wheat. 316; Story, "*Commentaries*," II, 47 *et. seq.*, and Thorpe, "*Short Constitutional History of United States*," 316.

making provision for persons failing to pay their debts. Whenever a man's means were insufficient to meet his engagements, it was considered that the condition of bankruptcy had arisen.'"*

Concerning the power over bankruptcies that was given to Congress, Noel says, p. 106:

"Even if the framers of the Constitution did look to the English system of their day, it does not follow that they intended to fetter their country with an imitation of the contemporary English statutes. Although there is evidence that this system was in the minds of the delegates, and that the first American law was but a transcript of it, still it is also a matter of record that the commercial and financial organizations of other countries were known to the members of the Convention. And no one has ever been able to substantiate the theory in regard to any social institution or branch of law, that the offspring should remain rigid, inelastic and petrified, while the parent system was developed. It is unreasonable to impute to the Federal Convention and the State ratifying conventions the intent to deny all future modification and development. The early English system regarded financial failure as a crime and its application embraced all persons. It has changed many times before and since 1787, and no one logical mind would argue that, even if we are bound to follow the English model, we could not notice and adopt modern improvements in it, but must confine ourselves to the one in use in 1787.

In such reasoning the ultimate criterion has not been used as a basis. To discover this one must look beyond the two systems and compare their causes—the powers which created each. These powers must be compared to comprehend the true analogy. The argument based on a comparison of the power of the Congress of the United States with the creation of the Parliament of England was a fallacy. The true criterion is power, the power of the Congress and the corresponding power of the Parliament, and then, since the Parliament had, at the time of the Convention, original and unlimited power, it will be readily admitted by the most strict interpreters of the Constitution that its framers intended to confer such original, unlimited and exclusive power, in respect to this branch of legislation, on the law-making body of the new Nation. To be consistent the same rule of interpretation must restrict innovations of the laws on the subject of patents, copyrights, etc., all of which are transcripts of the English statutes. To follow this principle in all similar cases would render the Government static as well as inefficient to provide for the new and complex problems and institutions of a progressing people, prevent adaptation of existing measures to changing circumstances and crystalize the Government in the form and condition which existed when the Constitution was framed; but it is not justifiable to apply the rule in one case and not in all.

The delegates exercised exceeding care in working out a scheme by which, for the benefit of the finances and commerce of the republic, the Congress was confided with the exclusive power of fixing the value of and coining money, of standardizing it further by prescribing the issue of State bills of credit, and in every way standardizing the medium and methods by which contracts and debts are discharged. This aim would be defeated if, after all, the States should retain the right to declare that contracts may be discharged upon the payment of three-fourths of the obligation,

And he concludes his review of the words in the Constitution, "The Congress shall have power * * *", by saying, p. 109:

> *"Only by unlimited, unrestricted and undivided power in the execution of this trust by the Congress can the original idea of the framers of the Constitution be carried into effect. This principle holds to-day, as well as prior to, during, and since the adjournment of the Constitutional Convention. The needs and desires of the people must be considered the first and universal rule of interpretation. A constitution is composed of static, fundamental principles; the general welfare and enlightened public opinion of every generation should be the living law."*

5.

". . . TO ESTABLISH . . . UNIFORM LAWS ON THE SUBJECT OF BANKRUPTCIES THROUGHOUT THE UNITED STATES."

Noel says, p. 111:

> "In order to realize the confusion arising from the multiplex and discrepant State laws for the release of the debtor and the distribution of his effects, prior to the enactment of the Federal law, it is necessary only to consider the inconvenience and injustice which result from lack of uniformity in our day in the various State laws on divorce, shipping, and insurance. American citizens to-day would not tolerate such a condition as that of debtors before the promulgation of this salutary law. The misery, the wretchedness, the suffering, the

as in the case of *Ogden versus Saunders* under the New York law of 1801, or as in some of the States, without any payment at all. If it was intended by the delegates to allow the States to retain the power of setting up laws which would remit even present debts, the clause of the tenth section would not have been inserted as an impediment. No great or important political object would have been attained thereby, for future debts soon become present debts."

despair, the crime and the injustice of those years are now scarcely comprehensible."

And thus we see that the quality of mercy is inherent in the exercise of the power to legislate on bankruptcy. That it was necessary in the early days of the Republic, and when there was no national bankruptcy law to protect the debtor. Extracts from Noel's review of the period during which no national bankruptcy act was in existence, is illustrative.*

On page 113, he says:

"By Penn's code in colonial times, tools, etc., were exempted, and later Pennsylvania enacted a law similar to that of New Hampshire. But during times of panics and bank failures, the Keystone State imposed the condition that banks could not obtain executions until they resumed specie payments. Virginia had the same rule, which originally had been enacted in 1837. In Ohio, upon demand by the debtor, the sheriff or constable about to sell property taken in execution for debt was required to summon three house-holders of the county to determine the money value of each article. Unless at public auction the article brought two-thirds of the assessed value it was not permitted to be

*"Some of the accounts of these early days read like tragedies. To the misfortunes of the debtor class, due to lack of comity and harmony among the laws of the several States, indeed to the conflict and repugnance of the State laws, were added the hardships arising from their instability and viciousness. For many years, according to Webster, the usage was, 'Having the power to establish uniformity, we delegate by sufferance the authority to create variety.' This condition and its results can best be explained by a description of the operation of the various State laws. Belknap, in his *History of New Hampshire*, described the working of the law of that State. A tender law was enacted in 1785, and had it been vigorously executed, it is probable that two-thirds of the community would have been in prison for debt. Its purpose was to release the debtor from prison upon the tender of his real or personal property in lieu of money. In its intent it favored the creditors, for if the goods tendered were not acceptable, they could refuse them, take out an *alias* within a year, and levy on any property of the debtor which could be found." (Noel, p. 112.)

sold, and this law was enforced by public demonstrations. Indiana required the same appraisement but the property could be disposed of at one-half of the assessed value. Farming implements, kitchen utensils and household goods were not salable for less than the prescribed one-half. This act failed to prevent the sacrifice of property. Well-cured hay was knocked down for one dollar a ton, and a Dayton newspaper reported that five hundred acres of wheat were sold for six dollars. A tax-collector of southern Illinois reported that men in his district were eager to work out their taxes at the rate of twelve and one-half cents per day. As the slaughter continued, the words 'fair value' were generally substituted for a specified percentage of the true value, and this arbitrary standard gave rise to greater complications. Illinois also required that the appraised value be written on the execution. Michigan had the same laws, but added a condition that the real estate could not be attached unless the personal property was insufficient to satisfy the claims. The creditor was allowed ten days in which to accept the property thus available, at the expiration of which time the sheriff was authorized to endorse a discharge on the levy, and the creditor was forced to pay the costs. By the laws of Mississippi, if the property did not obtain a bid of two-thirds of its appraised value, the writ was stayed a year."

It will be noted that this law with respect to the value of the property was made necessary by the unnatural attitude of the creditor classes, which, having the right to bid in the property, did so at these ridiculous figures. The Gods of Greed have the same policy today.

A TYPICAL INSTANCE JUST REPORTED

Take a typical case recently reported. In this case the Chemical Bank and Trust Company had a mortgage on a woman's home. It foreclosed. The mortgage was

for $10,000.00. It got a decree for $11,000.00. It bid the property in for $500.00, and took a deficiency judgment for $10,500.00. Six months later it sold the property for $12,000.00. In the meantime the little lady had obtained some property, so these generous gentlemen promptly issued a deficiency execution against her for the $10,500.00 deficiency. Instead of being crushed, this particular mouse uttered a protesting squeak, with the result, that she hired lawyers, and they happened to find some statute of New York under which this deficiency execution could be restrained. This is the case of *Chemical Bank and Trust Company* v. *Adam Schuman Associates*, 268 N. Y. S. 674.

The opinion of the Supreme Court of New York in that case is extremely illuminating, as illustrating the condition that confronted this country at that time. The court said, p. 76:

> "What 'basis of fact or circumstances' exists for challenging this travesty, miscalled an auction sale? It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservatism and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The legislatures of various states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms

of the distressed. Banks have largely abandoned their time-honored function of accommodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligation is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wide-awake debtor will, under such circumstances, apply to and obtain, from another lender, equivalent accommodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy-turvy period, like the present. In truth and in fact, mortgage money is, and for some months has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point. These considerations lead to the conclusion that the sale price of the property was so grossly inadequate that no rights, except possibly, those of innocent third parties, can be predicated thereon, and further that there is a sound 'basis of fact and circumstances' for equitable intervention."

Noel concludes his review of the necessity for a "uniform system of bankruptcy", by saying, p. 119:

"It is unnecessary to add more instances to prove that the lack of a uniform system of bankruptcy laws was responsible for a lamentable condition. Its results can be easily imagined. It is estimated that about 1833 seventy-five thousand

persons were sent to jail each year for debts. From documents used in the Senate of New York in 1817, it appears that the keeper of the 'Debtors' Jail' in New York City reported that during the preceding year nineteen hundred and eighty-four debtors were confined, and that more than six hundred were always in the prison or on its limits. In this report the sheriff of the county certified that seven hundred and twenty-nine were imprisoned for debts of less than twenty-five dollars. In 1833 in New York there were ten thousand people imprisoned for debt, seven thousand in Pennsylvania and three thousand in each of the States, Massachusetts and Maryland. The jails of Boston during 1828 held one thousand and eighty-five unfortunates; the creditors of Philadelphia confined during only eight months of 1829 eight hundred and seventeen, of whom eighty owed less than one dollar. Baltimore, during the same year, had nine hundred and forty-four, and to complete the study of thirty-two prisons for the year 1820, there were two thousand eight hundred and thirty-one in jail for less than twenty dollars. At Carlisle, Pennsylvania, the sheriff at one time advertised twenty-seven tracts of land for sale, and a petition from Northumberland County in that State recited that 'debts were unpaid, creditors dissatisfied, and the jails full of honest but unfortunate persons whose wives and children had thereby become a burden on the township.' The people of Wayne County daily saw their property passing into the hands of rich speculators, while the citizens of Pike County asserted that their property was constantly being sold at one-fourth of its value. Sundry citizens of Huntingdon County presented a memorial to the Congress stating that, their property taken for debts was selling for less than sufficient to pay the fees of the officials. These accounts show that during the early years of the National era there was no improvement on the condition under the Confederation, which had no requisitory power, no independent judiciary, but could only recommend legislative and judicial measures. On account of the failure to apply the virtues of the new *Constitution*,

the commerce of the whole country was prostrated and almost ruined. Private debt was almost universal, bankruptcy and financial distress were the rule rather than the exception, and the maze of difficulties was so intricate that few were hopeful of ever enjoying the promised freedom, happiness and success of the *Constitution.*"

It must be remembered that this period was that which existed in the nation between the repeal of the Bankruptcy Act of 1800 and the passage of the Act of 1841. That just as the Bankruptcy Act of 1800 had to be passed in order to cure the evils which the cruelty of states' legislation perpetrated, so was it necessary again to pass the Bankruptcy Act of 1841 to cure the same dreadful evils which arose because of the greed of the creditor classes, as soon as the restriction upon them was removed.

This review, fragmentary as it is, from the greatest historical treatise on the bankruptcy legislation extant, might also be considered a review of conditions today. How apt are these words: (Noel, p. 120)

> *"Private debt was almost universal, bankruptcy and financial distress were the rule rather than the exception, and the maze of difficulties was so intricate that few were hopeful of ever enjoying the promised freedom, happiness and success of the Constitution."*

6

THE LAW OF 1800

Noel says, with respect to the bankruptcy law of 1800, p. 131:

> "The first of the Federal bankruptcy acts, like a law discharging debtors from prison, alleviated the condition of merchants and speculators who had been ruined in the late panic, 'and proved a mere sponge for enabling the debtors to wipe out at

> their creditors' cost what they owed them.' Other causes of its failure and early repeal were its obvious design to protect creditors, which it failed to accomplish and thus disappointed all classes, * * * * * "

Citing Schouler, "*History of the United States*", II 26; also I, 468.

Among reasons assigned by Noel for the failure of this law was primarily that "it neglected the agricultural interests". And as he says, p. 132:

> "It was claimed that the system of England, a commercial country, could not be made serviceable in the United States, an agricultural country, and in this Country the method of handling failures by the State insolvency laws was strongly advocated. The most general objection to it arose from its limitation to the affairs of the merchants of the country."

Thus showing a specific distinction had to be made between the necessities of a purely commercial people, such as the English, and an agricultural people, such as those in the United States. Noel calls attention to the fact, however, that Justice Story lamented its repeal, and considered the law an excellent one.

7

THE LAW OF 1841

From 1804 until 1840 was an era of state insolvency laws. "The distress of that period was unprecedented in the history of the country." Great commercial losses resulted from the embargo on trade with France and England. The charter of the First United States Bank expired, and the circumstances caused a severe financial stringency until the Second United States Bank was

chartered in 1816. "Wilcat" banks added to the disorder. Lack of a suitable protective tariff at that time in the growth of the Republic, is alleged to have added to the desperate state of affairs. Commerce was in a deplorable condition.

Another cause of public calamity rose from the debt of $23,000,000 to the government for public lands. The debtors were no small proportion of the population, and mostly inhabitants of the new states and territories. The banks which had been depended upon to take care of the settlers, failed, and when the installments came due, they were defaulted. Financial conditions throughout the country on this account became deplorable. The deficit of the Treasury had increased to more than $13,000,000.00. This is not a description of the condition from 1931 to 1934! It is abridged from Noel's description of the period from 1804 to 1840.

Noel, pp. 134, 135,136, and 137.

And the following quotation from Noel is singularly apropos, page 136:

> "There were repeated attempts during the administration of Van Buren to enact a bankruptcy law to relieve the disastrous results of the Jackson regime, which had thrown so many enterprising people into helpless indebtedness. One of the provisions of President Van Buren's plan to restore the commerce of the Country to prosperity after the gloom of 1837 was the making of a bankruptcy law applicable to corporations and banks. This was recommended in his first message to the Congress, which was successfully controverted by Daniel Webster, the opposition leader, analyzing the message in his speech on the *Payment of the Fourth Installment of the Surplus Revenue.*"

The bankruptcy law of 1841 was largely the work of

Daniel Webster, who, as Senator from Massachusetts, drafted and proposed the measure. This law introduced the principle of voluntary bankruptcy into our legislation. It was substantially for the benefit of debtors, and was originally reported as a purely voluntary measure. The Act was passed August 19, 1841, went into operation February 2, 1842, and was repealed about 18 months after its enactment.

The following historical review of the position of Henry Clay, is particularly appropriate at this time. Noel says, p. 142:

> "Henry Clay spoke in favor of the act in the Senate on January 17, 1842. He stated that, under the administrations of Jackson and Van Buren there was a numerous class of enterprising men who had been ruined beyond hope of relief, except by a bankruptcy law. In such case it would seem to be a humane law, although it might be unjust to the creditors on account of the undue advantage which would be taken by some not entitled to its benefits. His constituents as well as numerous petitioners from New York, Maryland, Pennsylvania, New Jersey and Massachusetts, did not wish the law's operation impeded. He rebutted the objection that the bankruptcy bill, if permitted to operate, would throw hundreds of millions of dollars worth of property on the market as a sacrifice, by calling attention to the fact that under the jurisdiction of the common law or the State insolvency laws, the same amount of property would fall under the hammer of sheriffs without competition to raise the price or the creditors obtaining a proportionate share of the proceeds of the sale. The appalling condition of the country, in his opinion, demanded the law; hopeless debtors were depending on it to relieve them of their misery, and the business men of the country were arranging their affairs in conformity with it."

In *Sackett v. Andross*, 5 Hill 327, the court said, (Noel, p. 143):

> "Bankruptcies applies to all persons unable to pay their debts,—the power of the Congress is not restrained to any particular mode of discharge, voluntary or involuntary; it can relieve antecedent contracts as well as those entered into subsequent to the passage of the law; and the *ex post facto* prohibition of the Constitution refers to criminal offenses only."

THE LAW OF 1867

The next bankruptcy law, that of 1867, was passed as a result of the aftermath of the Civil War. It was said that in 1864 there were over 100,000 hopeless debtors in the loyal states of the Union. There were received by the Thirty-Seventh Congress, 40,000 petitions for the enactment of a bankruptcy law. The first session of the Thirty-Eighth Congress was largely devoted to war measures. But in the early days of the session a bill for a bankruptcy law was introduced into the House, and a motion carried to appoint a committee of nine members to consider the subject. Mr. Jenckes of Rhode Island, was appointed chairman of this committee, and reported the bill.

Noel says, p. 149:

> "In making the report Mr. Jenckes summarized the bill as presenting unusual claims at a time when all the business interests of the country were in a constant state of agitation. The grant of the power implied its exercise as a duty. He said, the power which is now invoked had been exercised intermittently, at long intervals, to meet exigencies in the business of the country, and the laws had

been repealed before they had formed the basis of a system of legislation. In this Country there neither is nor can be any privileged classes which could exclusively enjoy the benefits of such a system of laws. All are liable to insolvency, and all are equally entitled to relief. This was Mr. Jenckes' reason for extending the bill beyond the traditional limit of merchants. His policy of including a voluntary feature was based on the conviction that in most cases, although not formally, the bankrupt's confession of his condition puts in motion the wheels of the law."

An interesting sidelight on the foresight of the Congress of today in providing for the conciliation and composition proceedings is the observation of Noel, p. 150:

> *"It began to be realized that too close connection with the Courts was one of the causes of failure of earlier laws on the subject of bankruptcies.—Insolvency is a matter between the bankrupt and his creditors."*

The chief objection to the bankruptcy law was the greed of creditors, who caused widespread misery and suffering by taking advantage of the involuntary provisions of the law, and forcing into bankruptcy numerous small businesses, who could have survived if given a little time. A situation identical to the farm foreclosure law of today. Noel says, p. 155:

> "The supreme test of the capacity of the law of 1867 was the memorable panic of 1873 which was due to over-speculation and consequent over-production in almost every branch of industry throughout the commercial world. In the United States the crisis came with the failure of Jay Cooke & Co., of Philadelphia, to realize on certain railroad securities. Between 1873 and 1876 mercantile failures amounted to $775,000,000, and defaults by rail-

roads to the sum of $779,000,000. Before the condition had subsided in 1878, 47,000 failures had occurred. The money loss was $1,200,909,000. The severity and extent of this crisis was aggravated by the insolvency section of the bankruptcy law by which were forced into the financial maelstrom thousands who with a little patience of creditors could have remained in business."

Citing Pile, *"Wall Street the Morning After"*; Hyndman, *"Commercial Crises"*, 100, 120; Dewey, *"Financial History"*, 370-72; Jugler, *"History of Panics"*, 95; Wiley & Rines, *"The United States"*, 440-50.

This law was repealed in 1878.

9

THE LAW OF 1898

The next bankruptcy law to be passed, is the present one. Noel's preliminary observations on this law deserve attention. He says, p. 157:

"The development of bankruptcy legislation after the repeal of the law of 1867 admirably illustrates the maxim that laws follow but never lead public opinion and that government is constantly in a state of mutation. To crystalize either the laws of a country or its social institutions would mean extinction to the government. New laws and new governments are never imposed on an unwilling people, but owe their existence and their strength to the closeness with which they interpret the desires of the governed. The evolution of the laws on bankruptcy during the last fifty years has been in the main, constant and beneficial. The debates of the Congress incident to the repeal in 1878 of the former law prepared the way for the composition of the far more adequate law of 1898. There are so many things to be provided for in a

> bankruptcy law that it is almost impossible for the intelligence of even a Congress to grasp all the points which may arise relative to the enactment of such a system of legislation. Time and experience tend to perfect all laws. The process of perfection continued from the time of the Forty-fifth Congress until the assembling of the Fifty-fifth without producing a substitute for the repealed law."

Again space will not permit a review of the many encomiums that Noel reprints concerning it. After all, it is sufficiently recent and sufficiently familiar for every one to form his own opinion. We pass from its consideration to the conclusion of the author, to whom the legal profession is so greatly indebted for a scholarly, philosophical, and understanding review of bankruptcy legislation. Unique and unsurpassed in its field.

10

SOME ASPECTS OF THE BANKRUPTCY RELIEF MEASURES. LEGAL, MORAL AND SOCIAL-ECONOMIC.

The conclusions of Noel to his remarkable dissertation, are worthy of serious thought at this time. The sweep of this man's mind, his grasp of the outstanding fact of which creditors are blind, that the good of the nation must be superior to the temporary aggrandizement of the individual, stamps him as possessing an intellect far above the average. He says, p. 181:

> Higher civilization demands for the individual civil liberty and equal opportunity; society needs the untrammeled effort of every honest man. A practical system for the relief of bankrupts because of the conflicting character of the ends to be accomplished, must inevitably complicate the task of the State. Such system should be an harmonious combination of the maxims of the law, the rules of

ethics and the principles of social-economics. It should be the result of the legal rights between man and man as tempered by Christian principles and the prerogative of society to receive the benefits of the labor of every member. The laws of bankruptcy are not designed solely for the interest of the debtor or of the creditor or indeed for their combined interest. The claim of justice and the commercial development of the nation also must be considered."

The following quotation is in Noel from the great Justice Story, "*Commentaries*," II, 48 *et seq*, in which he says: (Noel, p. 182)

> "*One of the first duties of legislation, while it provides amply for the sacred obligation of contracts, and the remedies to enforce them, certainly is, pari passu, to relieve the unfortunate and meritorious debtor from a slavery of mind and body, which cuts him off from a fair enjoyment of the common benefits of society, and robs his family of the fruits of his labor and the benefits of his paternal superintendence.*"

Noel says, p. 184:

> "Imprisonment as a means of enforcing the fulfillment of contracts, and thereby supporting credit, is uneconomic, since it strikes at the root of all personal effort on the part of the debtor to retrieve his position and to return to solvency. Hence, there is need for a system which while maintaining credit, is just to creditors, is not unduly burdensome to debtors, and which discriminates between the involuntary inability of the honest business man and the wilful or fraudulent neglect of the adroit rogue or abandoned profligate. Insolvency is forever a concomitant of the credit system. Therefore, in a contingency when full payment of a debt is impossible, the partial payment plan of the modern bankruptcy system is the best remedy. That its practical results fall short of its theoreti-

cal promise as a means of carrying out a contract, of supporting the credit system and indirectly contributing to the commercial success of the country is principally because its efficiency is not realized and appreciated as it should be by law-givers, business men or the people in general.

Such law should support credit in two ways, by placing limitations on the one receiving it and by providing an opportunity whereby the insolvent debtor may declare his true condition without the former disastrous consequences. Thus the resources of the creditors will be conserved. The sooner the condition of insolvency is published the better it is for all parties concerned, but the natural tendency of the hopelessly disabled debtor is to persist until the last chance of survival has vanished. This tendency can be likened to contact with a 'live wire'. The failing business man can not let go, but holds on until too late he realizes that to surmount his difficulties is impossible. Then has recourse to the bankruptcy law, the switch which releases him. Without this salutory remedy, the condition in the case of the conscientious man would not be relieved until he had worried himself into a grave."

And that is exactly the situation confronting the farming class at the present time. The farmer is the soul of honesty. Hence creditors can induce the farmer to beggar himself to prove his honesty. So that the recorders' offices in the agricultural counties are cluttered with chattel mortgages on livestock, implements, and crops, which the farmers give, thereby stripping themselves to the bone to make partial payments on delinquent interest and principal, the full of which can never be met.

The quotations heretofore made from the great Jurist Story are no sounder and no more classic in expression than the following quotation from Noel, p. 186:

"The relief of the debtor and his commercial restoration are important studies in the field of social-

economics. The abolition of imprisonment did not remove from the debtors all restraint and bondage. Without the *tabula rasa* of the system of bankruptcy laws, earning capacity is taken away, the faculty of usefulness and aptitude is paralyzed and hope is extinguished. 'Society can never prosper but must always be bankrupt, until every man does that which he was created to do.' Franklin appositely describes the debtor's state of mind.

'If you cannot pay at the time, you will be ashamed to see your creditor; you will be in fear when you speak to him; you will make your pitiful sneaking excuses, and by degrees come to lose your veracity, and sink into base, downright lying; for, as Poor Richard says, *The second vice is lying, the first is running into debt;* and again, to the same purpose, *Lying rides upon debt's back;* whereas a freeborn Englishman ought not to be ashamed or afraid to see or speak to any man living. But poverty often deprives a man of all spirit and virtue. *'Tis hard for an empty bag to stand upright!'*

This mental condition of a member of society brings to it no benefit. On the contrary, society must be seriously injured by the presence of unproductive or discontented members, who through idleness or vicious habits may eventually become public charges. If the laws of bankruptcies were based on the legal rights of individuals, there would be no warrant for the discharge of debtors from the payment of their debts as long as they lived, or their estates would continue to exist. But public policy makes it expedient that insolvent debtors, instead of being forever entangled by obligations as enduring as the task of Sisyphus, shall be given a fresh start in life under the benevolent influence of the ordinary incentives to industry and enterprise. The exhilarating effect of release from the onus of debt is thus described by Shakespeare:

> And when the mind is quicken'd out of doubt,
> The organs, though defunct and dead before,
> Break up their drowsy grave, and newly move
> With casted slough, and fresh legerity.

On the other hand, this benign policy must not

be permitted to foster greater evils than unrelieved insolvency produces. The mode of relief should be elastic and graduated according to the comparative merits of the conduct of the debtors and the circumstances which lead to their insolvency. When obligations can be satisfied more easily than through toil and sacrifice, far less effort to make honest payments is likely."

Noel continued, p. 191:

"In the absence of fraud or criminal negligence, the bankrupt although not guilty, is not wholly innocent, for the creditor has rights which must not be violated even if adversity be the cause of the bankrupt's condition. His claims are a part of his property, but his rights are partially offset by the paramount rights of the community. A private right must always give place to a general good. But this law also operates for the creditor's advantage, for if the insolvent debtor remain under the burden of debt, the fund will gradually be further diminished, perhaps depleted, while the creditor will procure nothing more except in the case of the conscientious man who, in any event, would make restitution. By relieving the debtor, the community is benefited by his experience, greater precaution and renewed industry. In spite of his misfortune a debtor continues to enjoy rights coequal with the creditor. Therefore the State is called upon to administer, differentiate and protect the rights of the debtor and those of the creditor.

God wills human society, but civil society can not be maintained without authority to protect and enforce the definite individual rights of those composing it in a manner conformable with the best interest of society at large. To do this is the first duty of the State. Its second duty is to determine and maintain indefinite rights. To accomplish these purposes the State has the right, by the natural law, to pass any positive law which really favors the common good by the protection of some private right. The norm of interference with private rights is the public good. The relation of the debtor and

the creditor is a relation of contract entered into with the fullest intention of the parties thereto to accomplish that which they promise. Is the authority of the State competent to interfere with the relation of contract, and if it is, to what extent can it absolve a debtor from his debts? According to what theologians call 'natural justice', the debtor owes the full amount which represents that which he has received, and he is obliged, *coram Deo*, to pay it. If he is unable to pay in full, assuming the equal circumstances of all the creditors, he should pay *pro rata* as much as he is physically able to spare. If afterwards he prosper and is in a position to pay the balance, he must do so. In this rule, in the absence of the general good, all the doctors agree. It is understood that in case the bankrupt does not become able to discharge the debt, he is not culpable, unless he assumed it knowing that he could not fulfill the obligation. Physical or moral incapacity will be a valid excuse as long as it lasts, for if he can not make restitution without reducing himself to beggary and those depending upon him to wretched circumstances, it will be sufficient if he have the desire to restore what belongs to his creditors.

For the common good, however, the State has authority to interpose and to set aside the rules of 'natural justice'. By virtue of this power bankruptcy laws have been established, which relieve the debtor who has complied with all the legal requirements and protect him against the courts and invocation of authority for the exaction of additional payments."

Noel partly concludes his great work in saying, p. 198:

"*We come now to a summarized consideration of the development of the Federal bankruptcy system. The origins of its numerous doctrines are found scattered over the civilized world throughout a period of twenty-five centuries. From a legal procedure adopted for the benefit of the creditors it has been transmuted into a commercial policy*

abounding with utility and profit alike for the debtors and the creditors of the entire community. It has been evolved in conformity with the exposition of William Penn, when he declared:

'We have (with reverence to God, and good conscience to Men) to the best of our Skill, contrived and composed the Frame and Laws of the Government, to the great End of all Government, viz., to support Power in Reference with the People; that they may be free by their just Obedience, and the Magistrates Honourable for their just administration; For Liberty without Obedience is Confusion, and Obedience without Liberty is Slavery. To carry this evenness is partly owing to the Constitution, and partly to the Magistracy; Where either of these fail, Government will be subject to convulsions; but where both are wanting, it must be totally subverted; Then where both meet, the Government is like to endure . . .'"

Finally Noel concludes his rather astounding work by saying, with respect to the bankruptcy laws, p. 200:

"The history of these laws is evidence of man's humanity to his fellow man. While all concede that as long as men barter, bankruptcy will be one of the evils of society, it is now regarded, not as a crime, but as a misfortune, not as a disgrace, but as a malady which needs the soothing remedy of sympathy and encouragement."

There are many unanswerable reasons applying at all times and in all conditions and stages of government which prove that such system should be a permanent part of the National legislation. In beholding the excellent laws for the relief of insoluble debt in the United States, a line in Franklin's farewell address to the Constitutional Convention recurs as applicable to this clause of that *Constitution* to which he referred. He said: 'It astounds me, sir, to find the system approaching so near to perfection as it does.'"

(Elliot, "*Debates*", V. 554.)

B.

THE CONSTITUTION CHARGES THE FEDERAL COURTS WITH VISION AND UNDERSTANDING. THEY ARE BOUND TO TAKE JUDICIAL NOTICE OF ECONOMIC CONDITIONS.

This nation was founded by farmers. It was organized by farmers. It has been defended by farmers. And farmers are still its backbone. If a large percentage of them are evicted from their homes, and their years of labor, and their life's savings lost, it will not be long before we will approach the condition so forcibly described by Judge Dick in his decision in, *In re Vogler*, Fed. Cas. No. 16,986, hereinafter referred to. It is amazing that these lienholders do not appreciate the terrific danger to the nation that they are helping to create. They ride the rapids, but neither hear the thunder of the falls, nor glimpse the jagged reefs between which their bark is plunging. They have not profited by the lessons of 1932, which were taught in the conservative Republican state of Iowa, as well as the so-called more radical states.

Nor the chaos of certain parts of Europe, largely induced by the ruthless and unseeing holders of securities. But privilege has ever been blind, inhuman and misunderstanding. The thinking and patriotic people of this country are not blind to the dangers that will result, if any successful effort is made to make peasants or peons out of such free born citizens as are petitioning this court for relief. And Congress sees the danger. And the Circuit Court of Appeals has seen the danger. Well did it say in its recent decision, February 11th, 1935, in this case (C. C. A. 6th Circuit):

> **"The public welfare sought to be conserved by the assailed legislation not only transcends the in-**

> terest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. Oregon & California R. R. v. U. S., 238 U. S. 393."

This Court cannot, and we know, will not, blind its eyes to the very serious condition that is confronting the nation today.

As we have irrefutably demonstrated by Government reports, agriculture has been going through a panic, not a depression, since 1921. Since that time farmers' incomes have been 50% of normal. It has taken Congress 13 years to afford to the farmer any opportunity to reorganize himself. But 3 years after a depression hit commerce, Congress afforded it relief. Congress did not wait 13 years to do so in the case of manufacturers, etc.

C.

JUDICIAL RECOGNITION OF "THE OUTSTANDING CONTEMPORARY FACT."

In *Atchison, Topeka & Santa Fe Railway Co. v. United States*, 284 U. S. 248, the Interstate Commerce Commission had entered an order reducing livestock rates, based on a record presented in 1928. In 1931 the carriers petitioned for re-opening of the case because of the change in economic conditions, which was denied by the Commission. The Supreme Court held that it was not only the duty of the Commission to take judicial notice of the change in conditions, but that it would do so itself. That the judicial branches of the

Federal government should keep themselves fully advised of the major economic changes, and must take judicial notice of them, This Court said, p. 260:

> "*There can be no question as to the change in conditions upon which the new hearing was asked. Of that change we may take judicial notice. It is the outstanding contemporary fact, dominating thought and action throughout the country.* * * * It is plain that a record which was closed in September, 1928—relating to rates on a major description of the traffic of the carriers in a vast territory—cannot be regarded as representative of the conditions existing in 1931. That record pertains to a *different economic era* and furnishes no adequate criterion of present requirements."

The case of *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, is a case which definitely supports the reasoning of the Court of Appeals of the Sixth Circuit in this case. It is a decision that was prophetic of the *Gold Clause cases*. It is a decision that might be termed emblematic of the safeguards that the Federal courts must continually erect, to protect the basis of American government from being wrecked by the die-hards of privilege. This is a country of free men, created, organized, supported and defended, throughout its entire history, primarily by freemen farmers. Thirty percent of the population of this country today live on farms that are operated by the head of the family. An overwhelming majority were owners. Today a large proportion of them own them no longer. What percentage no authoritative figures are available as yet. But coming to Benton County, of which counsel has some specific knowledge he can truly say, that at least 25 percent of the farms of that county have passed out of the hands of the farmers and into the ownership of large

corporations. The total acreage being somewhere in the neighborhood of 40,000 acres. At least another 20 percent are faced with foreclosure, or eviction because of various specious conveyances, such as "certificates of entry," that they have signed. The present economic condition is the result of the world wide cataclysm that has engulfed every class of society and spared no one. *Farmers certainly have neither caused it, nor contributed to it. In fact, the industry and honesty of the farmer is proverbial. The court will take judicial notice of the fact, that for practically the last three quarters of a century, which has witnessed the growth of large interests with funds to invest, farm mortgages have been considered the safest investment that could possibly be made, outside of the securities of the national government.* Various steps have been devised to cope with the present extraordinary conditions. Some, as the court well knows, by the National government, some by the States. One of the latter remedies was under consideration by the Supreme Court of the United States in the *Blaisdell case*. There the legislature of Minnesota declared that a national emergency existed as the result of unusual economic conditions. That the existence of this emergency demanded the exercise of the police power of that State for the protection of the public, and to promote the general welfare of the people, by temporarily extending the time allowed by existing law for redeeming real property from foreclosure and sale under existing mortgages. In support of this proposition it recited that "a severe financial and economic depression has existed for several years, resulting in extremely low prices for the products of farms and factories, in much unemployment, in almost complete lack of credit for farmers, business men and property owners, and in

extreme stagnation of business, agriculture and industry; that many owners of real property, by reason of these conditions, are unable and, it is believed, for some time will be unable, to meet all payments as they come due, of taxes, interest and principal of mortgages, and are, therefore, threatened with the loss of their property through foreclosure sale; that much property has been bid in on foreclosure for prices much below what it is believed was its real value, and often for much less than the mortgage indebtedness, resulting in deficiency judgments; that, under the existing conditions, foreclosure of many real estate mortgages by advertisements would prevent fair, open and competitive bidding in the manner contemplated by law."

On an application by a mortgagor to take advantage of the Moratorium Act, it was contended that the legislature had no right to recite the facts of the emergency, and could not by such recital buttress an undue extension of the police power of the State. Furthermore, that the legislation impaired the validity of contracts in violation of the 14th Amendment. An objection that cannot be made with respect to similar legislation by Congress.

The Supreme Court held that it was the duty of the legislature and courts to take notice of conditions that involve the welfare of the nation or of the different states. That it was the duty of the Federal courts to strengthen the hands of the legislature, when it was extended to grasp a power which it had, but which had been permitted to lie dormant. That the mere failure to use a weapon was no indication that it was not already in the arsenal. The Supreme Court held the law constitutional.

We wish to call to the attention of the court some

of its language. On page 422 it quoted with approval the language from the Supreme Court of Minnesota, upholding that Act, in which that court said, p. 422:

> "'In addition to the weight to be given the determination of the legislature that an economic emergency exists which demands relief, the court must take notice of other considerations. The members of the legislature come from every community of the state and from all the walks of life. They are familiar with conditions generally in every calling, occupation, profession, and business in the state. Not only they, but the courts must be guided by what is common knowledge. It is common knowledge that in the last few years land values have shrunk enormously. Loans made a few years ago upon the basis of the then going values cannot possibly be replaced on the basis of present values. We all know that when this law was enacted the large financial companies, which had made it their business to invest in mortgages, had ceased to do so. No bank would directly or indirectly loan on real estate mortgages. Life insurance companies, large investors in such mortgages, had even declared a moratorium as to the loan provisions of their policy contracts. The President had closed banks temporarily. The Congress, in addition, to many extraordinary measure looking to the relief of the economic emergency, had passed an act to supply funds whereby mortgagors may be able within a reasonable time to refinance their mortgages or redeem from sales where the redemption has not expired. With this knowledge the court cannot well hold that the legislature had no basis in fact for the conclusiin that an economic emergency existed which called for the exercise of the police power to grant relief.'" "189 Minn. 429; 249 N. W. 336."

Then this court quoted with approval the language of the concurring Justice of the Supreme Court, Justice Olsen, who said, p. 423:

"'The present nation wide and world wide business and financial crisis has the same results as if it were caused by flood, earthquake, or disturbance in nature. It has deprived millions of persons in this nation of their employment and means of earning a living for themselves and their families; it has destroyed the value of and the income from all property on which thousands of people depended for a living; it actually has resulted in the loss of their homes by a number of our people and threatens to result in the loss of their homes by many other people, in this state; it has resulted in such widespread want and suffering among our people that private, state, and municipal agencies are unable to adequately relieve the want and suffering, and Congress has found it necessary to step in and attempt to remedy the situation by federal aid. Millions of the people's money were and are yet tied up in closed banks and in business enterprises.'"

The Supreme Court said, p. 425:

"Emergency does not create power. Emergency does not increase granted power or remove or diminish the restrictions imposed upon power granted or reserved. The Constitution was adopted in a period of grave emergency. Its grants of power to the Federal Government and its limitations of the power of the States were determined in the light of emergency and they are not altered by emergency. What power was thus granted and what limitations were thus imposed are questions which have always been, and always will be, the subject of close examination under our constitutional system. While emergency does not create power, emergency may furnish the occasion for the exercise of power. 'Although an emergency may not call into life a power which has never lived, nevertheless emergency may afford a reason for the exertion of a living power already enjoyed.' *Wilson* v. *New*, 243 U. S. 332, 348. The constitutional question presented in the light of an emergency is whether the power possessed embraces

the particular exercise of it in response to particular conditions. Thus, the war power of the Federal Government is not created by the emergency of war, but it is a power given to meet that emergency. It is a power to wage war successfully, and thus it permits the harnessing of the entire energies of the people in a supreme cooperative effort to preserve the nation."

And in explaining that the Constitution should not be given a narrow construction, the court said, p. 426:

"But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details. That is true of the contract clause. The necessity of construction is not obviated by the fact that the contract clause is associated in the same section with other and more specific prohibitions. Even the grouping of subjects in the same clause may not require the same application to each of the subjects, regardless of differences in their nature. See *Groves* v. *Slaughter*, 15 Pet. 449, 505; *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, 434."

The court continued, p. 434:

"Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' *Stephenson* v. *Binford*, 287 U. S. 251, 276. **Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,**

—a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residium of state power has had progressive recognition in the decisions of this Court."

This court said, p. 439:

> "The preservation of state power appropriate to such extraordinary conditions may be deemed to be as much a part of all contracts, as is the reservation of state power to protect the public interest in the other situations to which we have referred. And if state power exists to give temporary relief from the enforcement of contracts in the presence of disasters due to physical causes such as fire, flood or earthquake, that power cannot be said to be non-existent when the urgent public need demanding such relief is produced by other and economic causes."

If this is true with respect to the power of the States to act, how much broader is the power of Congress to act for the national welfare! And the court said, p. 442:

> "*It is manifest from this review of our decisions that there has been a growing appreciation of public needs and of the necessity of finding ground for a rational compromise between individual rights and public welfare. The settlement and subsequent contraction of the public domain, the pressure of a constantly increasing density of population, the interrelation of the activities of our people and the complexity of our economic interests, have inevitably led to an increased use of the organization of society in order to protect the very bases of individual opportunity. Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the*

State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends. It is no answer to say that this public need was not apprehended a century ago, or to insist that what the provision of the Constitution meant to the vision of that day it must mean to the vision of our time. If by the statement that what the Constitution meant at the time of its adoption it means to-day, it is intended to say that the great clauses of the Constitution must be confined to the interpretation which the framers, with the conditions and outlook of their time, would have placed upon them, the statement carries its own refutation. It was to guard against such a narrow conception that Chief Justice Marshall uttered the memorable warning 'We must never forget that it is a *constitution* we are expounding' (M'Culloch v. Maryland, 4 Wheat. 316, 407) 'a constitution intended to endure for ages to come and consequently to be adapted to the various crises of human affairs.' *Id.* p. 415. When we are dealing with the words of the Constitution, said this Court in *Missouri* v. *Holland*, 252 U. S. 416, 433, 'we must realize that they have called into life a being the development of which could not have been foreseen completely by the most gifted of its begetters. . . . The case before us must be considered in the light of our whole experience and not merely in that of what was said a hundred years ago.' Nor is it helpful to attempt to draw a fine distinction between the intended meaning of the words of the Constitution and their intended application. When we consider the contract clause and the decisions which have expounded it in harmony with the essential reserved power of the States to protect the security of their peoples, we find no warrant for the conclusion that the clause has been warped by these decisions from its proper significance or that the founders of our Government would have interpreted the clause differently had they had occasion to assume that responsibility in the conditions of the later day.

The vast body of law which has been developed was unknown to the fathers, but it is believed to have preserved the essential content and the spirit of the Constitution. With a growing recognition of public needs and the relation of individual right to public security, the court has sought to prevent the perversion of the clause through its use as an instrument to throttle the capacity of the States to protect their fundamental interests. This development is a growth from the seeds which the fathers planted. It is a development foreseen by the prophetic words of Justice Johnson in *Ogden v. Saunders*, already quoted. And the germs of the later decisions are found in the early cases of the *Charles River Bridge* and the *West River Bridge*, *supra*, which upheld the public right against strong insistence upon the contract clause. The principle of this development is, as we have seen, that the reservation of the reasonable exercise of the protective power of the State is read into all contracts and there is no greater reason for refusing to apply this principle to Minnesota mortgages than to New York leases."

And the Supreme Court in holding that it must not close its eyes to the situation existing said, p. 444:

"Applying the criteria established by our decisions we conclude:

1. An emergency existed in Minnesota which furnished a proper occasion for the exercise of the reserved power of the State to protect the vital interests of the community. The declarations of the existence of this emergency by the legislature and by the Supreme Court of Minnesota cannot be regarded as a subterfuge or as lacking in adequate basis. *Block v. Hirsh*, *supra*. The finding of the legislature and state court has support in the facts of which we take judicial notice. *Atchison, T. & S. F. Ry. Co. v. United States*, 284 U. S. 248, 260. It is futile to attempt to make a comparative estimate of the seriousness of the emergency shown in the leasing cases from New York and of the emergency

disclosed here. The particular facts differ, but that there were in Minnesota conditions urgently demanding relief, if power existed to give it, is beyond cavil. As the Supreme Court of Minnesota said, the economic emergency which threatened 'the loss of homes and lands which furnish those in possession the necessary shelter and means of subsistence' was a 'potent cause' for the enactment of the statute.

2. The legislation was addressed to a legitimate end, that is, the legislation was not for the mere advantage of particular individuals, but for the protection of a basic interest of society.

3. In view of the nature of the contracts in question mortgages of unquestionable validity the relief afforded and justified by the emergency, in order not to contravene the constitutional provision, could only be of a character appropriate to that emergency and could be granted only upon reasonable conditions.''

And in reverting to the fact that the ''basic interest'' of society was involved, the Supreme Court said, p. 445:

''Also important is the fact that mortgagees, as is shown by official reports of which we may take notice, are predominantly corporations, such as insurance companies, banks, and investment and mortgage companies. These, and such individual mortgagees as are small investors, are not seeking homes or the opportunity to engage in farming. Their chief concern is the reasonable protection of their investment security. It does not matter that there are, or may be, individual cases of another aspect. The legislature was entitled to deal with the general or typical situation. The relief afforded by the statute has regard to the interest of mortgagees as well as to the interest of mortgagors. The legislation seeks to prevent the impending ruin of both by a considerate measure of relief.''

With regard to the argument that by extending the equity of redemption the court was depriving the mortgage holders of a property right, in that they were kept out of possession of the property if a sale had been had, the Supreme Court said, p. 446:

> "In the absence of legislation, courts of equity have exercised jurisdiction in suits for the foreclosure of mortgages to fix the time and terms of sale and to refuse to confirm sales upon equitable grounds where they were found to be unfair or inadequacy of price was so gross as to shock the conscience. The 'equity of redemption' is the creature of equity. While courts of equity could not alter the legal effect of the forfeiture of the estate at common law on breach of condition, they succeeded, operating on the conscience of the mortgagee, in maintaining that it was unreasonable that he should retain for his own benefit what was intended as a mere security; that the breach of condition was in the nature of a penalty, which ought to be relieved against, and that the mortgagor had an equity to redeem on payment of principal, interest and costs, notwithstanding the forfeiture at law. This principle of equity was victorious against the strong opposition of the common law judges, who thought that by 'the Growth of Equity on Equity the Heart of the Common Law is eaten out.' The equitable principle became firmly established and its application could not be frustrated even by the engagement of the debtor entered into at the time of the mortgage, the courts applying the equitable maxim 'once a mortgage, always a mortgage, and nothing but a mortgage.' Although the courts would have no authority to alter a statutory period of redemption, the legislation in question permits the courts to extend that period, within limits and upon equitable terms, thus providing a procedure and relief which are cognate to the historic exercise of the equitable jurisdiction. If it be determined, as it must be, that the contract clause is not an absolute and utterly unqualified restriction of the State's protective power,

this legislation is clearly so reasonable as to be within the legislative competency."

And finally the court summarily disposed of the argument that the legislation was unfair and was unwise by stating that that was no concern of the court, but was a matter entirely within the discretion and province of the legislative authority, saying, p. 447:

> **"Whether the legislation is wise or unwise as a matter of policy is a question with which we are not concerned."**

It is against the American scheme of government to permit corporations to acquire large tracts of farming land and evict therefrom their farmer owners. Especially is this true, when it appears that such a portion of the population has literally beggared itself to meet its payments under the mortgages, and has turned over to creditors practically everything of which it was possessed. Thus it will have nothing left, except some $600.00 in exemptions, (Indiana) and which in these present days, puts such a class of freemen in a condition worse than what the peasants of Europe labor under. At least that class if it has little property, has little responsibility. The legislation is not as drastic as might have been imposed. For instance, in Poland, which has a constitution modeled after the American Constitution, the legislature has reduced the interest rate on farm mortgages to 2 percent, and extended them for 50 years. Some such provision as that may yet be necessary here, because it is becoming increasingly evident to all thoughtful people, and students of the present world travail, that until that which is being born, is spewed forth, and evaluated, that no man can truly say what the future holds. And it is neither

patriotism nor good common sense to attempt to enslave a substantial portion of the population. And it is becoming more and more apparent, that this depression will not end in the five years, that Congress evidently thought it would.

In re Radford, 8 Fed. Supp. 489, the district court said, in this case, p. 499:

> "Courts may take judicial notice of universally recognized facts. At the time this legislation was enacted, the nation was going through the severest financial depression in its entire history. Values of all property, and particularly of farm property, had not only sunk to unprecedented levels, but there was no market for it even at these levels. In legislating on matters committed to it by the Constitution, Congress undoubtedly may give thought to public policy and the general welfare. Within the scope of its delegated powers it may legislate for the general welfare, just as states may do under their police power."

The court continued, p. 499:

> *"Unquestionably, it is desirable that the sacrifice of farm property and the dispossession of farmers shall be avoided, so far as constitutionally may be done with fairness to others, during an emergency such as now prevails. It was the judgment of Congress that through the medium of bankruptcy proceedings the farmer should be given five years within which to rehabilitate himself and save his property. Discretion on this subject, within constitutional bounds, rests with Congress, and I am not prepared to say that these bounds have been exceeded in the legislation under consideration."*

Also see:

> *In re Cope*, 8 Fed. Supp. 778, referring to the emergency declared by Congress to exist, by Section 78 of the Bankruptcy Act.

Paine v. Capital Freehold & Land Co., 8 Fed. Supp. 500.

I.

SECTION 75 (8) IS A REMEDIAL LAW AND AS SUCH TO BE LIBERALLY CONSTRUED TO EFFECT ITS PURPOSE

In the great case of *In re Chicago, R. I. & P. Ry. Co.*, 72 Fed. (2nd) 443, now before this court, the Circuit Court of Appeals of this district, in holding Section 77 constitutional and discussing its effect, laid stress upon the fact that it was the duty of the United States Courts to effectuate the intention of Congress. Section 77 does for a railroad what Section 75 does for a farmer, and the language used by the Court of Appeals is apt to the case involved here. The court said, p. 450:

> "Upon the authority expressly granted by the Constitution to Congress (article I, Sec. 8), that body is authorized to enact such bankruptcy legislation as it may deem wise and appropriate. The constitutional grant of authority is not conditional nor limited, save that its laws be uniform throughout the United States. If the Congress divides debtors, into classes such as farmers, corporations, individuals, railroads, etc., it is acting within its powers. It is not for the courts to brush aside such classification on the ground that there is not sufficient justification in fact therefor."

Then the court in discussing the necessities of railroads continued, p. 450:

> **"Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the provisions of the Constitution.** It required no investigation by Congress to show that the railroad companies

occupied a distinct and unique position and were the legitimate subject of special provisions of the Bankruptcy Act. The necessity of continuing the operation of the railroad, the impracticability of liquidating its assets through the usual methods adopted in courts of bankruptcy, the futility of selling divisions or subdivisions of railroads or of rolling stock, etc., all unite to furnish a basis in fact for a classification of debtors which singled out railroad corporations and provided specially and specifically for their administration by the Court."

We may well paraphrase this reasoning of the Court of Appeals of this Circuit by applying it to farmers. And as the Court of Appeals of the Sixth Circuit pointed out a month or so ago, in holding the Frazier-Lemke Act constitutional, that one purpose of this law was to prevent the lien holders from acquiring the land, and thus assist in building up a large peasant class of the character that is known in Europe. *That one of the fundamental policies of American government is to keep the farmer on his own farm.* In discussing the duty of a Federal court to effectuate the purposes of Congress, the court said, p. 451:

"Surely, we are justified in giving to the amendment a liberal construction, one that is consonant with the purposes of this remedial legislation. That which distinguishes this section from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a *plan of reorganization.* It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale. The consummation of a fair and equitable plan of reorganiaztion is the goal of the legislation. How could a

> plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?"

This court is not oblivious to the practical situation confronting the country. It must take judicial notice of the fact as shown by the government reports, some of which are attached hereto, that ten millions of acres of farm lands, the finest and most fertile in the nation, have passed into the grasp of a few large corporations. A policy, interentially condemned by this Court in the *Blaisdell* Case. As the Court of Appeals well said in this case, p. 449:

> "We desire to direct our attention to the statute as amended to the condition that confronts us, not to a theoretical or suppositious question."

The case of *In re Landquist*, 70 Fed. (2nd) 929, recently decided by the Court of Appeals of the 7th Circuit, held Section 74 constitutional, which is part of a series of amendments, of which Section 75 is one. In that opinion the court discusses the construction that should be given to legislation of this kind, and says very clearly that Congress is the sole judge of the proper means to meet present conditions and can enact such legislation as it desires under Section 8 of the Constitution, provided such legislation is uniform. With reference to the power to pass such legislation, which is important, in order to evaluate the question presented, the court said, p. 931:

> "The Bankruptcy Act of 1898, of which the enactment of 1933 is an amendment, expressly recognized this principle. 11 USCA Secs. 1 and 21; In re Hargadine-McKittrick Dry Goods Co. (D. C.) 239 F. 155 (reversed on other points (C. C. A.)

244 F. 719); In re Foster Paint & Varnish Co. (D. C.) 210 F. 652. It is clear that appellees at the time of filing their petition were bankrupts within the meaning of the law, and that Congress was empowered by the Constitution to enact such bankruptcy legislation as it might deem proper for the benefit and relief of all persons so situated and their creditors, providing the enactments were uniform throughout the United States."

In discussing the proposition that Congress was the sole judge of the means to carry into effect its Constitutional powers, the court said p. 932:

"In making laws necessary and proper to carry into execution the powers vested by the Constitution, Congress possess the choice of means and may use any which are in fact conductive to the exercise of such powers. In the Matter of Edward Klein, 1 How. (42 U. S.) 277 (opinion by Mr. Justice Catron sitting as a Circuit Judge). See, also, United States v. Fisher, 2 Cranch (6 U. S.) 358, 2 L. Ed. 304; McCulloch v. Maryland 4 Wheat. (17 U. S.) 316, 4 L. Ed. 579; Legal Tender Cases, 12 Wall. (79 U. S.) 457, 20 L. Ed. 287. In Sturgis v. Crowinshield, 4 Wheat. 122, 195, 4 L. Ed. 529, Chief Justice Marshall, speaking of the scope of power granted by the 8th section of article 1 of the Constitution, said, 'The bankrupt law is said to grow out of the exigencies of commerce, and to be applicable solely to traders; but it is not easy to say who must be excluded from, or may be included within, this description. It is, like every other part of the subject, one on which the Legislature may exercise an extensive discretion.'"

The bankruptcy law should receive the interpretation which will effectuate its beneficent purposes.

Smith v. *Smith*, 7 Fed. Supp. 490.

The Frazier-Lemke Act merely affords to the farmer

a "long chance" to reorganize himself. He is afforded no such opportunity as is any other class covered by the bankruptcy law. Industrial corporations, railroad corporations, municipal corporations, and other individuals, may go into bankruptcy and either scale down their indebtedness, *including liens*, or repurchase their property for 75 percent or less of its appraised value.

Section 70 (b) of the Bankruptcy Act provides that if property is sold for less than 75 percent of its appraised value it should only be sold by express order of court. This section has been construed to mean that the trustee may sell property for 75 percent or more of its appraised value without an express order of court.

But in the case of the farmer he has to pay 100 percent of the appraised value, and subsequently he may be charged even more, perhaps even double, the original appraised value, and there is no other class covered by the Bankruptcy Act that is placed in this position.

It must be admitted that the purpose of this law is to keep the farmer on his farm. And hence every procedure, every order, that is taken under this law must be tested by that one standard. *Will the effect of such order tend to keep this farmer on his farm?* This is "farm" legislation that is being considered here. Farm relief legislation. And every doubt that there may be should be resolved in favor of the farmer.

2.

THE PLAIN MANDATE OF THE LAW CANNOT BE SET ASIDE BECAUSE OF CONSIDERATIONS WHICH APPEAL TO JUDGE OR REFEREE.

In Burton Coal Co. v. Franklin Coal Co., 67 Fed. (2d) 796, the court said, p. 797:

"Some question is raised as to the equity jurisdiction of the bankruptcy court. That it is a court of equity in the sense that 'its judge and referees, in adjudging the rights of parties entitled to their decision, are governed by the principles and rules of equity jurisprudence,' is beyond question. Larson et al. v. First State Bank of Vienna, S. D., et al. (C. C. A. 8) 21 F. (2d) 936; In re Rochford (C. C. A. 8) 124 F. 182; In re Ben Boldt, Jr., Floral Co. (C. C. A. 10) 37 F. (2d) 499. It has not, however, plenary jurisdiction in equity, but it confined, in the application of the rules and principles of equity, to the jurisdiction conferred upon it by the provisions of the Bankruptcy Act, reasonably interpreted. Johnson v. Norris (C. C. A. 5) 190 F. 459, L. R. A. 1915B, 884; In re Kane (C. C. A.) 127 F. 552. ((3,4)) *The plain mandate of the law cannot be set aside because of considerations which may appeal to referee or judge as falling within general principles of equity jurisprudence.* It must be conceded that a bankruptcy court having a fund in its custody, coming to it in the course of its administration of the bankruptcy estate, has exclusive power to make just disposition thereof. In re Antigo Screen Door Co. (C. C. A. 7) 123 F. 249; In re Rochford (C. C. A. 8) 124 F. 182; In re Goss (D. C.) 43 F. (2d) 746; Berl v. Gruther (C. C. A. 5) 60 F. (2d) 440; Murphy v. John Hofman Co., 211 U. S. 562, 29 S. Ct. 154, 53 L. Ed. 327."

Also see:

Home Bldg. & L. Ass'n v. *Blaisdell*, 290 U. S. 398.

Norman v. *B. & O. R. Co.*, 55 Sup. Ct. Rep. 407, 417.

In some of the decisions rendered by courts of rather limited vision, we see a certain misunderstanding at what they regard as revolutionary legislation. Well may it be so regarded. For it is intended as insurance that this country shall not lose the inalienable rights

of life, liberty and happiness for which its sons have fought, died, and risked their all, for a century and a half. Such courts do not see that the world is in labor. And what is to be born no one alive can tell. But it is to prevent any such hideous perversion of government as has overtaken a portion of the world, that Congress is frantically endeavoring to restore economic peace and security to this nation. By farm legislation Congress is patriotically trying to protect the theory of American government, to safeguard American liberty, by preventing the aquisition of huge tracts of farming land by a few greedy creditors, blindly absorbed in the pursuit of a sordid profit.

Perhaps these courts were not awake to the dangers. Perhaps their environment or lack of knowledge, is accountable for decisions, which can be explained on no other basis.

Unquestionably had these courts seen the terrible conditions, the unheard of problems confronting farmers gengrally, they could not possibly have spoken as they did. Were they advised of the lack of consideration shown to this industrious, honest and hard working portion of our population, by a "few greedy creditors," the unreasoning treachery displayed towards the weak by the strong, the assertion might safely be ventured that they would want their hands to wither before ever they would have penned the decisions they did.

Here the Court is asked to note what two judges of vision have stated concerning the present emergency. These decisions have been selected because they come from two parts of the country as far apart as the poles. One comes from the citadel of Croesus, the City of New York. And the other is rendered by a judge sitting

in the Lone Star State, 3,000 miles away. But their vision is the same, and they see eye to eye. As the Supreme Court of New York said in *Chemical Bank and Trust Company v. Adam Schumann Associates*, 288 N. Y. S. 674, p. 676:

"It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservation and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The Legislatures of various states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms of the distressed. Banks have largely abandoned their time-honored function of accomodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligations is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wideawake debtor, will, under

such circumstances, apply to and obtain from another lender, equivalent accomodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy turvy period like the present. In truth and in fact, mortgage money is, and for some moths has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point."

Great nations have been unable to pay their debts. The British Empire in its note to our state department, June 1, 1934, confessing its inability to meet its obligations, said:

"* * * * it was found impossible to arrive at a settlement acceptable to the two governments in face of the unprecedented state of world economic and financial conditions."

And thus United States Judge Atwell, of Texas, in holding section 75 constitutional, said in *Paine v. Capitol Freehold Land & Trust Co.*, 8 Fed. Supp. 500, p. 501:

"A trial court who sits in this portion of the state, where for several successive seasons the whole face of the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for livelihood. Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

And it is in that frame of mind that every patriotic citizen, every person who has sincerely at heart the good of his country, the good of his fellowmen, must evaluate all emergency legislation.

3.

THE PURPOSE OF SECTION 75 IS TO KEEP THE FARMER ON HIS FARM.

As the Circuit Court of Appeals of the Sixth Circuit has so recently pointed out, the theory underlying this government is to promote the ownership of farms by individual farmers. Our policy of government is opposed to any such condition as will tend to create a peasant class such as exists in Europe, or to transform our farmer owners into farm laborers, working on a small monthly wage.

Now how can that be accomplished by the present legislation? It can only be done with the assistance of the courts, thoroughly imbued with the theory of American government, thoroughly learned in the decisions rendered by those masters of the law who have construed the acts of Congress through the years.

The problem before the court is one of the utmost gravity, to many persons faced with disaster, and vital to the well being of the nation.

Congress might have wiped out the secured creditor's lien had it elected to do so. (Of course, the Fifth Amendment would prevent cancellation of the obligation, unless under circumstances such as at the present time are not apparent to this generation). Judge Dick of North Carolina, in the widely cited case of *in re* Jordan, Fed. Case No. 7514; 13 Fed. Cas. p. 1077, said, p. 1080:

> "Congress certainly has the plenary and paramount power, save the restriction above considered, to pass bankrupt laws which will not only impair the obligation of contracts, but entirely discharge the debtor from such obligations, no matter when or where contracted. *Congress, also, has the power*

in establishing a uniform system of bankruptcy to do away with the effects of liens created by the judgments of any court. If a judgment can be discharged by a bankrupt law there is no reason why a lien which is an incident to a judgment can not also be discharged."

And the learned judge also said, p. 1080:

"*The power expressly conferred upon Congress to enact uniform bankrupt laws, is necessarily an express power to do away entirely with contracts, as such a result is the very object and essence of bankrupt laws. But it is insisted that while Congress may have this paramount power over contracts, it exceeds its authority in enacting that state exemptions shall be 'valid against liens by judgment or decree of any state courts.' This is equivalent to saying that the contract may be impaired, but the remedy must not be interfered with —the principal may be destroyed, but the incident is protected against legislative action. There is nothing in the nature of liens why they should be thus specially protected, as they are not vested rights; but there are strong reasons why they should not be recognized and enforced by bankrupt laws. The enforcement of liens is certainly contrary to the policy of a general system of bankruptcy, the object of which is to distribute the estate of an insolvent debtor among all of his creditors, upon the principle that equality is equity. Liens, upon general principles, certainly deserve no special favor and protection in bankrupt laws. The bankrupt act, before the amendment of March 3, 1873, in express terms avoids liens valid under state laws and created by the levy of an attachment within four months before the commencement of proceedings in bankruptcy, and this action of Congress is generally conceded to be constitutional. Congress has even interfered with vested rights, for by the thirty-fifth section of the bankrupt act, assignments and conveyances made under certain circumstances are avoided, although such assignments and conveyances are valid at common law*

and under the laws of the state, and the parties have acquired a complete title and possession of the property conveyed. I have a very decided opinion that Congress did not exceed the limits of its constitutional powers in enacting the act of March 3, 1873. **I also think that Congress, under its general powers over the subject of bankruptcy could avoid all liens, whether existing by statute, by usage, by express contract, or at common law."**

It did not do so, although well it might under the express grant of power given it in Section Eight, Article I, of the Constitution. As the Supreme Court has just said in the *Gold Clause Cases*:

> "There is no constitutional ground for denying to Congress the power expressly to prohibit and invalidate contracts, although previously made and valid when made, when they interfere with the carrying out of the policy it is free to adopt."

4.

INTEREST ON A SECURED CLAIM STOPS WITH THE FILING OF THE PETITION IN BANKRUPTCY.

In *Sexton v. Dreyfus*, 219 U. S. 339, the Supreme Court in definitely deciding that interest on a secured claim stopped with the filing of the petition, said p. 344:

> "For more than a century and a half the theory of the English bankrupt system has been that everything stops at a certain date. Interest was not computed beyond the date of the commission. Exparte Bennet, 2 Atk. 527. This rule was applied to mortgages as well as to unsecured debts; Ex Parte Wardell, 1787; Ex Parte Hercy, 1792, 1 Cooke, Bankrupt Laws, 4th ed; 181; (1st ed., Appendix), and notwithstanding occasional doubts it has been so applied with the prevailing assent of the English judges ever since. Ex Parte Badger,

4 Ves. 165. Ex Parte Ramsbottom, 2 Mont & Ayrt. 79. Ex Parte Penfold, 4 De G. & Sm. 282. Ex Parte Lubbock, 9 Jur. N. S. 854. In re Sawin, 1 R. & Ch. 700, 704. Ex Parte Bath, 22 Ch. Div. 430, 434. Quartermaine's Case ((1892)), 1 Ch. 639. In re Bonnetou, 1 Manson, 59. As appears from Clarke, supra, the rule was laid down not because of the words of the statute but as a fundamental principle. We take our bankruptcy system from England, and we naturally assume that the fundamental principles upon which it was administered were adopted by us when we copied the system, somewhat as the established construction of a law goes with the words where they are copied by another State. No one doubts that interest on unsecured debts stops. See Sec. 63 (1). Board of County Commissioners v. Hurley, 169 Fed. Rep. 90, 91. The rule is not unreasonable when closely considered. It simply fixes the moment when the affairs of the bankrupt are supposed to be wound up. If, as in a well known illustration of Chief Justice Shaw's, Parks v. Boston, 15 Pick. 198, 208, the whole matter could be settled in a day by a pre-probate court, the secured creditor would be called upon to sell or have his security valued on the spot, would reserve a dividend upon that foot ing, would suffer no injustice, and ought not complain. If, under Sec. 57 of the present act, the value of the security should be determined by agreement or arbitration the time for fixing it naturally would be the date of the petition. At that moment the creditors acquire a right in rem against the assets. Chemical National Bank v. Armstrong, 32 Fed. Rep. 377, 378, 379. Merrill v. National Bank of Jacksonville, 173 U. S. 131, 141."

For a similar decision in the Circuit Court of Appeals of the 7th Circuit see *In re Chandler*, 181 Fed. 887. In that case the court said, p. 889:

"As a provable debt that is, as a debt within the scope of the bankruptcy act the note was limit

ed to the principal and the interest thereon that would have been recoverable at the time of the filing of the petition in bankruptcy. The only other reference to interest is in section 63a (5), wherein authority is given for the allowance of provable debts reduced to judgments after the filing of the petition in bankruptcy, 'less costs incurred and interests accrued after the filing of the petition, and up to the time of the entry of such judgments.' This requirement, like the stopping of interest and the relating of unearned interest under section 63a (1), shows the legislative intent that all creditors having the right to share in the distribution of the bankrupt's property should be placed on an equal footing as of the date of the filing of the petition."

The court continued, p. 889:

"No precedents under the present act have been adduced by counsel or found by us. But our holding accords with interpretations of similar provisions of the act of 1867 and of the English acts. *In re Orne*, Fed. Cas. No. 10,581; *In re Hooke*, Fed. Cas. No. 6,803; *Thomas v. Mead*, 77 Mass. (10 Gray) 263; *Ex Parte Reese*, 9 Ves. Jr. 588."

The old case of *In re Orne*, Fed. Cas. No. 10,581, 18 Fed. Cas. 821, is to the same effect.

In that case District Judge Blatchford said, p. 822:

"The time of the adjudication of bankruptcy is taken, by the statute, as the decisive time. The debt must exist at that time or it cannot be proved. If it is created afterwards it cannot be proved.

It is equally clear that, where the debt is one, not only in existence at the time of the adjudication of bankruptcy, but payable before that time, and running with interest, by its terms or character, so that the obligation of the debtor in regard to the debt will not be wholly discharged without payment of such interest as well as the

> principal, the statute intends that the debt shall be proved for the amount of the principal and of the interest thereon to the time of the adjudication of bankruptcy."

It will be noted however, that while the learned judge there took the date of adjudication as the date which "stopped everything", the Supreme Court takes the date of the filing of the petition. In this connection it might not be amiss to point out that section 75 provides that the filing of the petition shall have the same effect as if an adjudication in bankruptcy had been entered against the debtor. However, since the decision of the Supreme Court in *Sexton* v. *Dreyfus*, 219 U. S. 339, the date of filing the petition controls.

In re J. & S. Ferguson & Lyle, 267 Fed. 817.

In the case of *In re Vogler*, decided in 1873, Fed. Case No. 16,986, 28 Fed. Cas. p. 1248, the court said, p. 1252:

> *"The assignee is an officer of the court and the title of the property is conveyed to him by the court for the more convenient collection and distribution of the assets according to the purposes and provisions of the statute. The assignee has no individual interest in the property, and his title in no way affects the equitable rights of other persons; but he holds as a custodian of the law, until the court ascertains the legal and equitable rights of persons interested in the assets and orders a distribution to be made. Until such time, creditors proving debts have no absolute vested rights, and the court, after adjusting liens, may make a disposition of the assets, according to the rights of parties, under laws existing at the time distribution is ordered."*

But under sub-division (7) a secured creditor will obtain interest. In this respect he is more fortunate

than secured creditors under sections 77 and 77B. There are many instances of proceedings under these laws, where the holders of first mortgages will not receive interest unless it is earned, and unless the court in its wisdom sees fit to permit them to have some. The railroads in reorganization, of which there comes to mind the Seaboard Air Line, has not paid interest on all its first mortgage bonds for some years. So likewise are the first mortgage bonds of the Chicago & Eastern Illinois in default, and also the Rock Island.

But, willy-nilly, the farmer starts paying interest within six months.

5.

THE "REASONABLE RENTAL" REFERRED TO IN SECTION 75 (s) (7) OF THE NATIONAL BANKRUPTCY ACT REQUIRES AN ACT OF JUDICIAL DETERMINATION, FROM ALL THE FACTS SUBMITTED BY ALL INTERESTED PARTIES.

The particular words used have received some judicial construction. Of course, it is self-evident that as used in Section 75 they can mean nothing more nor less than such a rental as will effectuate the intention of Congress.

The following cases are of interest.

In *State* v. *Vanderluis*, 42 Minn. 129, the court was called upon to construe what was 'reasonable" qualification regulations imposed by the legislature for the practice of dentistry. The discussion of the court of this term is almost classic. The court said, p. 131:

> "By the term "reasonable" we do not mean expedient, nor do we mean that the conditions must

be such as the court would impose if it were called on to prescribe what should be the conditions. They are to be deemed reasonable where, although perhaps not the wisest and best that might be adopted, they are fit and appropriate to the end in view, to wit, the protection of the public, and are manifestly adopted in good faith for that purpose."

In *Bennett* v. *Fuller*, 136 Wis. 193, the court was called on to state what was "reasonable" regulation of tenement-buildings. The court said, p. 202:

"There is no certain test by which what is reasonable in any given case can be definitely measured. It is a matter resting in human judgment. So the line between what is reasonable and what is not, marking the boundary of constitutional authority of the legislature, is one often difficult of ascertainment, rendering it very necessary, in all doubtful cases, for the judiciary to defer to the wisdom of the legislature."

The court continued, p. 203:

"It is said, 'that an attempt to give a specific meaning to the word "reasonable" is "trying to count what is not number, and measure what is not space."' *Ulsch[illegible]* v. *Coburn*, 38 Nebr. 881, 890, 57 N. W. 836, 838. It is not synonymous with 'expediency.' Matters of that sort are wholly for legislative cognizance. As applied to means to a legitimate end it suggests not necessarily the best or the only method, but one fairly appropriate at least under all the circumstances. In the ultimate, the scope of the term as regards any situation must be measured having regard to the fundamental principles of human liberty, as they were understood at the time of the formation of the constitution and were intended to be impregnably entrenched thereby, adapting the same, of course, to our modern conditions. Those principles have not changed in the years that have lapsed since the

constitution was formed. They are unchangeable and are of no less but rather of greater importance than they were when the framers of the Constitution attempted so carefully to guard them."

And the court went on to say, with reference to what was reasonable under the statute, that it should use common sense as applied to the whole situation, in deciding what was proper in view of the end to be attained.

The court continued, p. 203:

"In determining that, the court must look to the language of the statute and to all the facts bearing on the situation of which it may properly be said to judicially know because of their common nature or otherwise. *People ex rel. Kemmler* v. *Durston*, 119 N. Y. 569, 24 N. E. 6; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 8, 18 Sup. Ct. 757."

In *Rexroth* v. *Holloway*, 45 Ind. App. 36, the court was called upon to construe whether the hire of a horse by an agent was "reasonably incident" or "necessarily incident" to the performance of the principal's business. The logic of the court has some force here. The court said, p. 37:

"It is sometimes used to express that which is reasonable for the purpose required (*Mobile, etc., R. Co.*, v. *Alabama, etc., R. Co.* (1888), 87 Ala. 501, 6 South. 404; *In re Rhode Island, etc. R. Co.* (1901), 22 R. I. 457, 48 Atl. 590; *Mayor, etc.*, v. *Chesapeake, etc., Tel. Co.* (1901), 92 Md. 692, 48 Atl. 465), or that which is reasonably convenient under the circumstances (*Kelley* v. *People's Transportation Co.* (1870), 3 Ore. 189; *St. Louis, etc., R. Co.* v. *Trustees, etc.* (1867), 43 Ill., 303). It is sometimes given the meaning of that which is useful and suitable, or needful and conductive to or expedient or convenient, for the purpose required. *Board, etc.*, v. *Isenberg* (1900), 10 Okla.

378, 61 Pac. 1067; *Commissioners, etc.*, v. *Noesta* (1892), 91 Mich. 149, 51 N. W. 903; *Jerome* v. *Ross* (1828), 7 Johns, Ch. *315, 11 Am. Dec. 484; *Aurora, etc., R. Co.* v. *Harvey* (1899), 178 Ill. 477, 53 N. E. 331. There are cases which hold that the word 'necessary" means 'indispensably requisite,' 'inevitably' or 'not to be avoided.' *Lockwood* v. *Mildeberger* (1899), 159 N. Y. 181, 53 N. E. 803; *Town of Oldtown* v. *Dooley* (1876), 81 Ill. 255; *Hitch* v. *United States* (1895), 66 Fed. 937; *Stevenson* v. *State* (1885), 17 Tex. App. 618; *State, ex rel.*, v. *Mayor, etc.* (1894), 39 Nebr. 745, 58 N. W. 422; *English* v. *Reed*, (1895), 97 Ga. 477, 25 S. E. 325. But in the cases from different tribunals, giving these various definitions, there is little, if any, actual conflict, and from them it is made clear that the word 'necessary' must be considered in the connection in which it is used; that it is a word susceptible of various meanings, that it may import absolute physical necessity or inevitability, or that which is only convenient, useful, appropriate, suitable, proper or conductive to the end sought. *Mayor, etc.*, v. *Chesapeake, etc., Tel. Co., supra; McCulloch* v. *Maryland, supra.* 'Reasonable' is a term difficult of definition, and usually it must be considered with the facts of the particular controversy in determining its force and latitude. *In re Nice & Schreiber* (1903), 123 Fed. 987. It is sometimes used to express that which is appropriate and necessary (*Levering v. Union, etc., Ins. Co.* (1867), 42 Mo. 88, 97 Am. Dec. 320); it includes good faith and the exercise of a sound discretion (*Dearborn* v. *Batten* ((1888)), 64 N. H. 568), and it imports what is ordinarily or usual under the circumstances of the case. *Reed* v. *Missouri, etc., R. Co.* (1902), 94 Mo. App. 371, 68 S. W. 364; *Geno* v. *Fall Mountain Paper Co.* (1895), 68 Vt. 568, 35 Atl. 475."

So in the case presented here the "reasonable rental," which the court is called upon to fix must be such rental as will not merely tend to carry out the purpose of the law, but which actually will accomplish that pur-

pose, which is to keep the farmer on his farm.

What this rental shall be is a question for judicial determination. It must be decided by a United States court from a review of evidence that may be submitted by both the debtor and his creditors. All the circumstances of the case are to be taken into account.

But if as a matter of law, the secured creditor is not entitled to interest after a bankruptcy petition is filed, he can hardly complain of a law that gives him interest.

Railroads go into bankruptcy. Frequently secured creditors, even holders of first mortgages, do not receive interest for years. If our recollection is correct, there are several railroads in bankruptcy right today, such as the Seaboard Air Line and the Chicago and Eastern Illinois, that have not paid interest on their first mortgage bonds for quite a long period. Yet in the case of the farmer, he must start paying interest or rent within six months after his petition is acted upon.

X

IT IS NOT UNCONSTITUTIONAL TO SELL, OR LEASE BACK, TO THE FARMER, HIS OWN PROPERTY.

It is not intended to argue this proposition at any length. There has been made heretofore, what we believe is an adequate presentation of this proposition, insofar as legal precedent is concerned.

And yet, even these have little force when considered in the light of the fundamental safety of the nation that the Constitution intended should be the concern of this Court, for the ages to come. The preservation of the Republic is involved today just as critically as in 1776. True, the Hessians of finance are not clothed in the red coats of oppression, neither do they carry muskets.

But their purpose is just as ruthless and just as deadly, even though masked by the sweet smiles of courtesy and the docile demeanor necessary in a United States court room. If they succeed in their ill conceived, unpatriotic, and ill advised design, to acquire huge quantities of land at the expense of a large percentage of our farming population, they will break the back of the nation and cut its throat, and render it supine in the face of possible dangers, that are not remote. They will encourage the red flag of anarchy to wave in the cities, in the belief that the farmer, for a century and a half the conservative, stable, and dependable bulwark of this Republic, who founded it, defended it, and preserved it, has become unstabilized because of the elimination of his fortune, the deprivation of his home, the extinguishment of any opportunity to provide for his old age and the future of his children.

There are 23,000,000 persons on the relief roll of the country. It is said there is something like 11,000,000 former workers unemployed. The overwhelming majority of these are in the cities. It is there that starvation will first rear its ugly head. We wonder that those who are trying to evict the farmer, should be so narrow, as not to understand what a state of starvation really portends. What suffering in the large city really can be. One of the counsel in this case has been connected with the Emergency Relief Commission of Chicago. A report was made in the Winter of 1931, that there were 80,000 people in the city, who came out of their basements at night, and like rats, prowled the alleys, grubbing for food in the garbage cans. In the summer of 1931, he witnessed a riot in the alley in back of 10 South LaSalle Street, which his office overlooked, wherein several thousand men fought like wild beasts for scraps of food that the restaurants from Madison

Street had thrown out. It took 500 police to quell the riot.

In 1933, an officer of the other charities of Chicago, told him that there were 27,000 families on their roll, who had such insufficient heat, that they put their babies in the oven after cooking the meal, to allow the tiny bodies to absorb as much warmth as possible.

As William Lemke said in the debate in Congress, the law of self-preservation is a higher law than any man-made law. And the same idea was expressed to counsel a number of years ago by a friend of his, a foreman in an automobile factory, who was something of a philosopher, and who said, "A hungry belly knows no law."

Fortunately the farmer has been spared actual physical hunger. He has been able to grub out at least food for himself and family, shelter, and warmth.

Formerly he had been regarded by the working people of the cities with some fear and a great deal of respect. A land owner, monarch of all he surveyed. A horny handed son of toil, with muscles toughened and a physical strength equal to their own. A man with time to think, reason, and discuss. Why, the very word farmer, brings a sigh of respect from the worker in the city. Many of these people have not become acclimated to American institutions, as is the farmer. Not that they cannot be just as patriotic. We do not mean to imply the contrary.

But necessarily they have not had the opportunity to acquire the property that the farmer has. They have not been here long enough. To own a farm, costing $40,000.00 to $50,000.00, or $20,000.00, which would be the value of only 80 acres in the cornbelt a few years ago, means years of saving. And in many cases, per-

haps most of them, it means inherited wealth. Why the farmer is rooted into the very soil of the Republic. Tear him up, and you tear up the Republic and eliminate its source. The first thing that the immigrant to our shores learns, is stories about the farmer. Paul Revere's Ride. The Ragged Continentals. The Minute Men of Lexington. The farmers who starved at Valley Forge, just as they have starved the past 14 years. And the Civil War!

We are coming, Father Abraham,
Three hundred thousand strong,
We are coming from the mountain,
We are gathering from the plains,
Singing the Battle Cry of Freedom.

In every stage of American history the farmer looms large as the overpowering and decisive factor. When your working man takes his Susie or his Katrinka, or his Mimi out for an automobile ride on Sunday, where does he go? To the land of farms. To the countryside.

And there he sees a concrete symbol of stability, of conservation, of that which has made this nation great among the nations of the world. He turns from the fetid air of the city, with its banks, its insurance companies, its thousand and one parasitical enterprises that feed from the products of the land, and feed upon the industry of those who till the land, and he goes out to breathe the free air and enjoy the liberty of the rural areas.

And when he is starving, when he becomes a prey to the demagogue and the political scavenger, who holds him in check, and who will always hold him in check? The farmer! !

But teach the dissatisfied, starving and jobless worker of the city, that out on the quiet countryside,

there no longer stands the teeming millions of the descendants of the patriots of the Revolution, and you will see how quickly the red flag of anarchy will rear its head in the great cities, if we should slide back into the depression, instead of emerging from it. They will not know that no matter how the farmer may be oppressed, that his soul is the soul of America. That even above his love for his home and his family, is his reverence for God and his affection for his flag.

Let the tocsin of danger be sounded for the defense of the Republic, and the measured tramp of the countless millions of these sons of the soil, will again resound from the West, and the North, and South, and the East, to the call of their country, and so it always will be. And so we maintain that Congress in the passage of this Act, and those who desire to see it upheld and enforced, are more truly arguing in the interests of the mortgage holders, than are their paid satellites. We want the mortgage holders to prosper. We want them to be safe and secure. They also are a part of America. But Congress merely asks that they do the American thing by affording to the farmer just a long chance that he may be able to reclaim part of what he has lost. And that he may save just his home.

Economic conditions have already caused such losses as there may be to the mortgage holder. Relatively, the farmer has suffered infinitely more. At the most, as we will show, even if the farmer could buy at the present appraised valuation, and not at the possible reappraisal five years hence, the mortgage holders can not sustain an average loss of over $10.00 an acre, in such percentage of cases as are subject to the Frazier-Lemke Amendment. We are using the Iowa figures heretofore cited as a basis. But the farmer in that case is suffering a loss of $166.00 an acre.

Yet in spite of this, he pays the full appraised value of the property. More than any other debtor does under the Bankruptcy Act. In fact, under section 70 (b) the courts hold that the trustee may sell property at 75 percent of the appraised value, without first consulting the court. There it is recognized, that a sale on that basis, is such a mighty good one, that if the trustee can obtain it, the court says "Well done, thou good and faithful servant."

This court has held that there is dormant power in the Constitution which may be used in times of emergency.

So it upheld as constitutional a statute of the State of New York, which permitted one person to occupy the property of another person, and against such landlord's wish, for two years, by paying a reasonable rental.

In *Block* v. *Hirah*, 256 U. S. 135, 41 Sup. Ct. 458, 65 L. Ed. 865, the question involved was the constitutionality of the Act of October 22, 1919, of the District of Columbia, which permitted the tenant of an apartment to remain therein after the expiration of the term fixed by the lease, so long as he paid the rent and performed the conditions fixed by the lease, or as modified by the rent commission of the district. An emergency existed there as it does at the present. The Act was limited to terminate within two years. The court said, p. 154:

> "But a declaration by a legislature concerning public conditions that, by necessity and duty, it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost worldwide fact. That the emergency declared by the statute did exist must be assumed, and the question is whether Congress was incompetent to meet it in the way in which it has been

met by most of the civilized countries of the world. The general proposition to be maintained is that circumstances have clothed the letting of buildings in the District of Columbia with a public interest so great as to justify regulation by law. Plainly, circumstances may so change in time or so differ in space as to cloth with such an interest what at other times or in other places would be a matter of purely private concern. It is enough to refer to the decisions as to insurance, in *German Alliance Ins. Co.* v. *Lewis*, 233 U. S. 389, 58 L. ed. 1011, L. R. A. 1915C, 1189, 34 Sup. Ct. Rep. 612; irrigation, in *Clark* v. *Nash*, 198 U. S. 361, 49 L. ed. 1083, 25 Sup. Ct. Rep. 676, 4 Ann Cas. 1171; and mining, in *Strickley* v. *Highland Boy Gold Min. Co.*, 200 U. S. 527, 50 L. ed. 581, 26 Sup. Ct. Rep. 301, 4 Ann. Cas. 1174. They sufficiently illustrate what hardly would be denied. They illustrate also that the use by the public generally of each specific thing affected cannot be made the test of public interest (Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co., 240 U. S. 30, 32, 60 L. ed. 507, 511, 36 Sup. Ct. Rep. 234), and that the public interest may extend to the use of land. They dispel the notion that what in its immediate aspect may be only a private transaction may not be raised by its class or character to a public affair. See also *Noble State Bank* v. *Haskell*, 219 U. S. 104, 110, 111, 55 L. ed. 112, 116, 117, 32 L. R. A. (N. S.) 1062, 31 Sup. Ct. Rep. 186, Ann. Cas. 1912A, 487."

The court continued, p. 155:

"The fact that tangible property is also visible tends to give a rigidity to our conception of our rights in it that we do not attach to others less concretely clothed. But the notion that the former are exempt from the legislation modification required from time to time in civilized life is contradicted not only by the doctrine of eminent domain, under which what is taken is paid for, but by that of the police power in its proper sense, under which property rights may be cut down, and to that extent, taken, without pay."

The reasoning of the court concerning the right of the landlord to speculate on increased rents, is rather appropriate to the case at bar. Here, if the land goes up in value, the farmer has to pay it, but in the case under consideration, the landlord only received the fixed rent. And it was held that while in one sense there was a taking of property, in that the landlord could not speculate upon the future increase in rents, that nevertheless this had to give way to the public interest.

The court said, p. 157:

> "Machinery is provided to secure to the landlord a reasonable rent. §166. It may be assumed that the interpretation of 'reasonable' will deprive him, in part, at least, of the power of profiting by the sudden influx of people to Washington, caused by the needs of government and the war, and thus of a right usually incident to fortunately situated property,—of a part of the value of his property as defined in *International Harvester Co.* v. *Kentucky*, 234 U. S. 222, 58 L. ed. 1287, 34 Sup. Ct. Rep. 853; *Southern R. Co.* v. *Greene*, 216 U. S. 400, 414, 54 L. ed. 536, 540, 30 Sup. Ct. Rep. 287, 17 Ann. Cas. 1247. But while it is unjust to pursue such profits from a national misfortune with sweeping denunciations, the policy of restricting them has been embodied in taxation and is accepted. It goes little if at all farther than the restriction put upon the rights of the owner of money by the more debatable usury laws. The preference given to the tenant in possession is an almost necessary incident of the policy, and is traditional in English law. If the tenant remained subject to the landlord's power to evict, the attempt to limit the landlord's demands would fail. Assuming that the end in view otherwise justified the means adopted by Congress, we have no concern, of course, with the question whether those means were the wisest, whether they may not cost more than they come to, or will effect the result desired. It is enough that we are not warranted in saying that legislation that

has been resorted to for the same purpose all over the world is futile, or has no reasonable relation to the relief sought. *Chicago, B. & Q. R. Co.* v. *McGuire*, 219 U. S. 549, 569, 55 L. ed. 328, 339, 31 Sup. Ct. Rep. 259."

To the same effect see:

Marcus Brown Holding Co. v. *Feldman*, 256 U. S. 170, 41 Sup. Ct. 465, 65 L. Ed. 877.
Levy Leasing Co. v. *Siegel*, 258 U. S. 242, 42 Sup. Ct. 289, 66 L. Ed. 595.

If the State has power to permit one person to occupy the *property of another*, at a reasonable rental, how much stronger is the power of the Federal Government to permit a farmer to occupy and use, *his own property;* by paying a reasonable rental therefor.

It has upheld a state statute which provides a moratorium on foreclosure of farm mortgages for 5 years.

Considering that the present emergency is far greater than existed in 1921, when the New York case arose, that the present emergency is still the same emergency that existed when the *Blaisdell case* was decided, it certainly does not seem unreasonable, nor unconstitutional, for Congress to provide that a farmer may occupy *his own property* for the same length of time, as the court approved in the *Minnesota Moratorium case*, and under a "reasonable rental", as the court approved in the *New York Rental case*.

But the lienholders' opposition narrows itself down to just one point of impact.

The lienholders, of which the one at bar is typical, desire the land. This is freely admitted. Because no other conclusion can be drawn from its and their oft reiterated assertion that Congress "has no power to take one man's property from him and give it to another."

Whose property is involved here? It is the farmer's. But the lien holders take the position they own it. Hence their statement "the debtor must surrender his property to his creditors." The two statements together merely mean that Congress cannot deprive them of the privilege they had under the Bankruptcy Act before it was amended, by which a lien holder could usually bid in the land and apply it against his indebtedness. Hence, their insistence that the Constitution prevents any such regulation as that we are discussing here. That sink or swim, these greedy creditors must get the last drop of blood, and must be permitted to peel the farmer right down to the hide, and perhaps even shave the cuticle. That is their construction of the Constitution. We say, and we think, that this Court is going to agree, that that is not the meaning of the Constitution. That the Constitution, instead of permitting any such avaricious, unreasonable, and uneconomic policy in this day of stress, expressly gives Congress the power to forbid it. We say that the procedure that this lien holder, and other lien holders are adopting, is unconstitutional, and violates every principle that the Constitution was passed to safeguard. That they are the persons, who are urging upon Congress, and upon this court, the adoption of an unsound, illegal, and unconstitutional procedure. That if their advice and their propaganda was followed, that they would turn Congress into an assemblage of pirates, that would scuttle the ship of state, as surely and as aptly as ever did a blood thirsty buccaneer on the Spanish Main sink one of the golden galleons. We say that if their construction of what the Constitution means was followed, the Constitution would become manacles around the wrists, and shackles around the ankles, of every progressive and forward thinking

citizen. That so irksome would be these restraints on the liberty of the citizens of this country, that it would be but a short time before they would rise in irresistible revolution, and that shortly we would have no such Constitution, of the kind these honorable gentlemen representing the lien holders contend we have.

So they insist that they have a right to bid in the land, take it for the indebtedness, or for a portion of the indebtedness, and transform Radford and other farmers in his position, from a farmer owner into a hired hand. And of course, if the Louisville Joint Stock Land Bank can do this, then the Frazier-Lemke Act cannot prevent any other mortgage holder from doing the same thing.

In other words, what their position really amounts to, is, that if this law which is here under attack, permitted the Louisville Joint Stock Land Bank to bid in the land, it would be a perfectly constitutional and just law. But otherwise if the same privilege is given to the owner.

THE ONLY CONSTITUTIONAL QUESTION

The only part of sub-section (s) of section 75 of the National Bankruptcy Act, that really is attacked, is sub-division (7). Because all the other sections relate to proceedings by consent, and such sections conceivably raise no constitutional question. Generally speaking, the lienholder can do what it wishes with its own property. But it is contended that if the lienholder does not consent to the sale, but objects, then it is mandatory upon the court to stay all proceedings for 5 years, and rent the property to the farmer for a "reasonable rental," with an option to purchase his own property at an appraised value fixed by the court, or at a higher reappraised value, subsequently fixed by the court.

When it is considered that the lienholder has no constitutional right to bid in the property, that he has not even a statutory right at the present time to his lien, aside from the Frazier-Lemke Act, if the court desires to sell the property free of liens, that the lienholder has no constitutional right to interest after the filing of the petition, and that he has not even a statutory right to interest under the present law, it would seem that the constitutionality of the Frazier-Lemke Act was clearly apparent, even if every other consideration was swept aside.

XI

WHAT REHABILITATES THE FARMER REJUVENATES THE NATION.

So many statistics could be adduced to prove the truth of this statement, as to bury an opponent to it beneath its weary tons. One-fourth of the nation is directly engaged in agriculture. That is, living on farms. The numbers directly dependent upon them must be at least 60 percent as large. The purchasing power of the farmer measured in terms of his income, is about 50 percent of his norm. The normal velocity of money ranges from 32.7 times for checks (outside New York, to 55 times on New York Securities. (Telegram Dow Jones, March 26, 1935). So give the farmer $5,000,000,000.00 more than he has been receiving, and see what happens when that income begins to circulate.

When it is considered as shown in a preceding portion of this argument, that the farmer has been struggling through a depression for the past 14 years, it can easily be understood what a tremendous backlog of necessities has been built up. Any one can see that for himself who drives through the Western country-

side. There is not one farm in 300 that doesn't need paint, fences, repairs of every description, mounting to totals so huge as to baffle the imagination.

There is not one farmer in 200 that has implements that are less than 10 to 15 years old. Modern labor saving devices are unknown on the farms. Radio sets are of the earliest models. The iceless refrigerator run by kerosene, and which offers an almost illimitable field, sells with the lethargy of poverty.

New clothing of the better grade, is almost unknown. Counsel who have a number of Frazier-Lemke cases, cannot recall one instance where the appraisal of wearing apparel exceeded $30.00. Go to any county seat on a Saturday night, or to church on a Sunday, and you can count the farmers, men and women, yes, and even the children, who wear new clothing of the better grades, on the fingers of one hand. Yes, there is new clothing being worn, but of the cheapest and shoddiest variety; by a class who owned substantial equities and even wealth, a decade ago.

The land has been milked to death for lack of fertilizer.

The estimates of repairs and new construction that could be built in the cities and towns, that is the urban centers, large and small, under the National Housing Act, run high into the billions. Multiply it by 10, and you would still be short, the possibilities inherent in the rehabilitation of the farmer.

In Benton County, Indiana, long rated by the Department of Agriculture as one of the premier agricultural counties of the country, there is hardly a farm house with a telephone. A new automobile, *owned by a farmer,* is almost a neighborhood curiosity. Insurance sales in the rural districts are at the lowest point in history.

All this is reflected in numberless ways through the smaller urban centers and spreading out through industry generally.

The farmer is a free spender when he has the money. That is a matter of common knowledge. So how can the national prosperity be helped by turning him into a hired hand at $20.00 a month, the current wage.

Few people realize the seriousness of the agricultural problem. Not only in dollars and cents, but in human equation as well. People read of two billions of dollars used to refinance farms. Or of three hundred million dollars, or five hundred million dollars spent for restricting acreage or the like. By itself, unquestionably such sums rival the riches of Midas. But it is not very much when it is considered that farm income is about $5,000,000,000.00 per year less than it should be. And that thereby using the velocity of money as 30 to 1, there is $150,000,000,000.00 less money velocity in the country than there should be.

The analogy that the farmer is the backbone of the country is a truthful one. And if the spine is injured, how can the body be healthy?

The breakdown of morale is also an element not to be lightly dismissed. Farmers have large families and large relationships. This is due to the fact that they have been rooted in the soil for generations. Have married into other families who in their turn, have spread their tenacles through the community. It is no uncommon thing to have a family reunion in the country, at which there are 500 relatives present. Evict one farmer unjustly! Is it human nature not to suppose that his relatives will have some feeling about it. Prevent a farmer from having a chance to reorganize when the same privilege is being extended to thousands of

corporations, including municipalities, and can it be expected that no resentment will result?

Under such circumstances, can the farmers' relatives believe that this is the country their ancestors founded, defended, and which they have helped to preserve?

Shall we forgive our debtors $10,000,000,000.00 *in foreign debts, more than the total amount of all the farm mortgages held in the United States, and still beggar our farmers?*

Did we spend our blood and our treasure to make the world safe for Democracy? And yet pauperize our farmers to gratify the whim of a greedy minority plutocracy?

It is unthinkable!

We believe this Court will agree, that in spite of our towering skyscrapers, bearing aloft their richly furnished offices, in spite of our gaudy temples of Mammon, with their RFC loans, in spite of our stately boulevards, great museums, stupendous libraries, large art institutes, and all the other concomitants of urban wealth and culture, that the future of this country, spiritual and physical, is indissolubly linked in its destiny with that of the man with the hoe. That this nation conceived by freemen, whose badge from time immemorial, has been the ability to own land, can never attain its proper place in the sun of the nations, while the farmer is left in the gloom of poverty, and the night of despair.

XII

EMERGENCY CALLS FORTH THE EXERCISE OF DORMANT POWER.

The contention of the greedy few, that the Constitution is a static thing, fixed and immobile, and that all the powers granted thereby, were sprayed forth the first

time Congress turned the nozzle, is not only repugnant to every right thinking student of constitutional law, but is one that in a time like the present, merits severe condemnation.

People with vision like this, would fiddle while the Republic burned. Not as Nero did, to gratify his lunatic glee, but because they couldn't imagine such a thing as a fire department.

The world has never progressed through the mind of the petty, and of the selfish man. Except where he became so numerous as to cause an explosion among his fellow citizens which irresistibly swept him away as an obstacle in the path of progress.

In the Constitution the Congress has always been able to find sufficient power to combat emergencies which have threatened the destiny of the nation. And this must be so, because the source of the Constitution is the people themselves. Certainly, as this court so recently observed, emergency does not create power. Any more than the pipes of peace breathe martial music to stimulate an army. But let the emergency arise, that threatens the nation, and the Constitution will always be found a sufficient source from which can be drawn the reasonable means to be prescribed by the Congress to meet the danger. The Constitution is the arsenal of the people's rights. *Innumerable and varied are the* weapons which lie concealed in the many storerooms of that mighty edifice. That is why those men who drafted the Constitution are so often referred to as its "architects." As times change, as the economic kaleidescope ceaselessly revolves its endless panorama, changes come to this, our Nation. Undreamed of by those wise men of the past who gave us this immortal heritage. But they placed at our disposal a great store

house with an infinite number of keys, and an infinite variety of cupboards. And they trusted to the wisdom of the future, to the destiny of the nation, to the protecting vision of the Most High, that as occasion demanded, the right key would be used.

The iron horse with its endless ribbons of steel, was not dreamed of by those great men of the past. But did that render the Safety Appliance Acts unconstitutional? And in the future decades, perhaps centuries hence, a different civilization will exist, with its different problems, that with all our advance in science, would seem as strange to us today, as would a country of 100,000,000 people bound together with bands of steel, have seemed to the members of the Constitutional Convention.

And in those far off days, as occasion arises, there lies ready for the hand of the Congress, weapons in that great store house of our organic law, which will meet, and so far as human fallibility may, conquer every emergency that will ever arise to threaten the safety of this nation, whether it comes from a cause within, as in the case at bar, or a cause without, as it did two decades ago.

In, *in re Cope*, 8 Fed. Supp. 778, the Court said all sections of the Bankruptcy Act were in *pari materia*, and the declaration of emergency in Section 78 would be considered as declaratory of the reason underlying all the recent reorganization amendments.

But the mere enumeration of the type of proceedings stayed under section 75 (o) shows that this section was born of an emergency. This is demonstrated still further by subdivision (7) of section (s), which provides that the Act shall apply only to debts existing at the time it became effective. As well as by the fact it

expires by limitation within five years from its passage.

However, we submit the emergency is fully recognized. It needs no legislative pointer to be realized.

While the number of farmers whose lands may be purchased under the Frazier-Lemke Act are a substantial percentage of the total farmers of the country, yet the effect of these farmers being thrown off their land and turned into peasants, or something similar to them, must also be thought of in terms of relationship. Farmers have many relations. In Benton County where this portion of the brief is being written, there are numerous families that have as high as 200 relations living within a very short radius. Family reunions are not uncommon with an attendance running up around 500. Therefore, when we consider that 5,000 evictions in a year may affect the morale of several hundred thousand people, it can be readily understood that the problem is not entirely one of merely the numerical number of farms involved.

The method proposed by the Congress is reasonable. The policy of the nation to promote the multiplication of freemen has been shown not only in the development of our own country, but in our policy towards other countries that have come under our protection, such as Hawaii, Porto Rico, Cuba, and the Philippines. Our policy towards these countries is worthy of that which animated the fathers of this great Republic.

> "It is the true imperial policy for a great civilied state engaged in the work of spreading civilization throughtout the world. In comparison with it, the colonial policies of other countries appear mean and sordid and altogether lacking in the element of altruism necessary to real success in executing the mission of civilization."
>
> ***John William Burgess***, Professor of Constitutional Law, Columbia University.

So, shall we revert to the system of government from which we revolted in 1776, and turn the clock back a century and a half? Are we going to make other peoples free and enslave our own?

In addition to the violation of the traditional policy of the Government, through the eviction of the farmer-owner, there is also the question of individual humanity involved. The Farm Credit Administration bulletin hereinbefore quoted from, stressed the frantic effort of the farmer and his family to keep their home.

The tatoo of the propaganda of dishonesty that the creditors insistently beat in the hearts of honest men. And which they have incessantly drummed throughout this proceeding. The adoption of methods frequently successful, to induce or force him to borrow from relatives and friends to satisfy the appetite of Moloch. The despair that invariably accompanies the farmer's failure to satisfy the insatiable. Then finally, the Juggernaut of eviction, with the attempted label of dishonesty, and the badge of failure, accompanied by the loss of home.

We have heretofore called to the Court's attention the published statement of a large mortgage holder as to the profit it expects to make out of its foreclosures.

There are numerous instances where farms are foreclosed for much less than their present market value. Radford's case is not of that type. But there are many who are in a different position.

This Court has stated it desires to be informed as to the consequences of legislation in *Willcutts* v. *Bunn*, 282 U. S. 216. Mr. Chief Justice Hughes said on page 230:

> "* * * no facts as to actual consequences are brought to our attention * * *."

We might mention the case of Mary Bodwell, of Winemac, Ind., where a farm assessed at $11,250.00 was foreclosed for $4800.00, and shortly after the owner evicted, sold for a price near the appraised value. This is the case of an old lady, owning 238 acres of fine land in Pulaski County, refused a loan by the Farm Credit Administration.

It might also be called to the Court's attention, that the Federal courts hold that the burden rests upon a party stating a law is unconstitutional, to show in what way he is injured.

The Louisville Joint Stock Land Bank has presented no evidence which indicates that the Frazier-Lemke Act will injure it. Its loss has already been sustained. In fact, we maintain that Act will be a great blessing to it. And for the Louisville Joint Stock Land Bank to acquire huge tracts of land against which its bonds are outstanding, and the purchasers know will have to be liquidated in order to pay interest on those bonds, and in order to comply with the provisions of the law, which require that the joint stock land banks *must liquidate*, obviously can be of no such benefit to it as the retention of farmers on the farms, the payment by them of interest or rental to it as lienholder, where now it receives nothing, and the eventual payment to it of the full appraised value of the land, or subseqently a much greater value.

It must be conceded that Congress could provide that a receiver could be appointed for a term of years for any bankrupt institution, and more especially for such as the farming class, and who could pay into court the proceeds fr m the farm until the debt was satisfied. There is no distinction between such a procedure and the creation of a situation whereby the farmer in effect,

becomes his own receiver, subject to the control of the court and the superintendence of the trustee.

XIII

AN EMERGENCY IS HERE. THERE IS A DISTINCT MENACE THAT OWNERSHIP OF FARM LANDS WILL PASS INTO THE HANDS OF A PRIVILEGED FEW. THAT THE OWNER-FARMER WILL DISAPPEAR AND BECOME A HIRED HAND. IF THIS HAPPENS, THE REPUBLIC AS WE KNOW IT, AND AS IT WAS INTENDED TO ENDURE, WILL BE AT AN END.

The principle at stake before this court is of far-reaching importance. While the farms taken over by lienholders amount to millions of acres, and as has been shown, in Benton County alone, to 25 percent of the tillable area, yet there are still hundreds of millions of acres of the public domain, that are not yet in foreclosure.

It is rather difficult to arrive in the limited time available, at any reliable estimate. But we can give the court some idea of the actual situation. According to Circular No. 309 of the United States Department of Agriculture, table 14 on page 58, in the appendix hereto, farm bankruptcies in 1925 to 1932, incl., totalled 45,891. A press release of the Department dated January 16th, 1935, gives farmer-bankruptcies as 5,917 in 1933, and 4,716 in 1934, making a total for the decade mentioned, of 56,524. Of the total, 2,020 in 1933, occurred in the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and 1,384 in 1934.

1,277 occurred in 1933 in the states of Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, and Kansas, and these states in 1934 contributed 983

farmer-bankruptcies. Thus it is clear that the Middle West, comprising the great grain belts of the country, and where the most prosperous farmers have been situated, are the sections of the country where the creditors, that is the mortgage holders, are making the most desperate attempts to obtain the land.

It probably is not an exaggeration to state that the average farm involved in these bankruptcies, is at least 100 acres. In fact, for the grain belt, 200 acres would be probably a better average.

Thus, in 1933 and 1934, in the grain belt of the Middle West, there has been 5,664 farmer-bankruptcies, meaning that at least 5,600,000, acres of the choicest land of the country has been taken away from the farmer-owners, and taken over by the mortgage companies in straight foreclosure proceedings. That is only part of the story.

In Benton County, concerning which counsel has personal knowledge, approximately 25 percent is owned by the former large mortgage holders.

And we will shortly demonstrate that it is reasonable to assume that the large mortgage holders have acquired not less than 10,000,000 acres in the grain belt. The most fertile part of the nation. And the land's former prosperous owners are now hired hands or tenants.

That brings us to one of the most discouraging aspects of the entire farm mortgage default situation.

First we must remember that for 75 years, approximately the period that farm mortgages have become the investment of corporations, as distinguished from private individuals, they have been regarded as one of the highest types of investment securities. Not because of the value of the land alone, but because there stood

in back of the obligation an honest and industrious debtor. The honesty of the farmer is proverbial.

Hence, when after long years of floundering in the slough of the agricultural panic, which as we have demonstrated, began in 1921, the farmer reached an impasse in 1930, it was not a difficult matter for the mortgage holders to persuade farmers in many instances, to abandon any further battle against the economic stress, and to give them deeds to their farms. This policy became easy of accomplishment for two reasons. First, the farmers' natural trustfulness in the advice of the mortgage holder, whom he had learned to respect, in many instances the "field man" had become his personal friend, and then too, he desired to pay his debts. He felt that the land was held for the debt, and was ready and willing to surrender the security to the creditor.

So obviously, the farmer, harassed on the one side by the honest man's urge to do everything he could to discharge his obligations, on the other, tormented by the fear of losing his home, and deprived of any opportunity of providing for either his future or that of his family, and unable to obtain disinterested advice, went through such an agony of mind that we doubt if the history of the Republic affords any parallel to it.

The government publications heretofore referred to mention this.

For the first time in history, suicides were not uncommon in the rural districts.

But the statement made as to the acreage obtained by the mortgage holders in the Middle West for 1933 and 1934, is only part of the story.

Turn to page 58 of Bulletin No. 309, containing the statistics for 1925-1932, inclusive. This shows that during this period in the East North Central States[A] there

A. Ohio, Indiana, Illinois, Michigan, Wisconsin.

was 7,755 farmer bankruptcies. During this period in the West North Central States[B], were 14,672 bankruptcies, or a total for the Middle West of 22,327 farmer bankruptcies. Thus for the decade 1925-1934, there has been in the Middle West alone, a total of 27,991 court bankruptcy cases.

If in each case was involved only a 100 acre farm, much smaller than the average grain farm, as counsel knows it, there has been taken over by the mortgage holders, through bankruptcy procedure alone, 2,799,100 acres of land.

But this is very far below the actual figures, large as is this total.

There is a way in which we may arrive at a rough approximation of the menace to the Republic.

Assume that the land taken over had an average value of $60.00 an acre, which would be rather high as an average for all the loans made in these states, counting all the different varieties of land.

We will then take the annual report of five insurance companies, whose loans are made principally in the grainbelt of the United States. Take the farm lands that they have taken over, and it is apparent that the astounding total is something like 10,000,000 acres. The figures reproduced a little further on, are taken from the annual report of the Northwestern Mutual Life Insurance Company of Milwaukee, Wisconsin, for 1934, the Ninetieth Annual Statement of The Mutual Benefit Life Insurance Company of Newark, New Jersey, being its annual statement for 1934, the 72nd Annual Statement of the John Hancock Mutual Life In-

B. Minnesota, Iowa, Missouri, North Dakota, South Dakota, Nebraska, Kansas.

surance Company of Boston, Massachusetts, being its annual report for 1934, the "Business Statement" of the Metropolitan Life Insurance Company of New York for 1934, being its annual statement for that year, and the Seventy fifth Annual Statement of The Equitable Life Assurance Society of the United States, of New York, being its annual statement for 1934. These statements show the following:

FARM PROPERTIES OWNED

The Northwestern	$ 32,477,579.45	(a)
Mutual Benefit	56,154,688.37	(b)
John Hancock	82,255,207.54	(c)
Metropolitan	286,415,857.18	(d)
Equitable	136,312,707.36	(e)
Total	$593,586,039.90	

Total acreage at $60.00 per acre, 9,893,100.66 acres

(a) Includes "Foreclosed real estate subject to redemption" $6,277,261.02.
(b) Character not stated. But first mortgage loans on city and suburban property show practically no decrease from 1932 to 1934. Whereas first mortgage loans on farms decreased one-third. Report page 14.
(c) Includes "Home office and other real estate."
(d) Character not stated.
(e) Character not stated. Includes foreclosed real estate subject to redemption.

Of course it would take a Congressional investigation to determine the exact facts and adequately publicize the appalling conditions. The 5 companies referred to, had total assets at the end of 1934 of $7,941,158,916.20.

Altogether at that time there were 318 legal reserve companies in the United States showing total assets at the end of 1933 as $21,197,582,350.00. The acreage owned by all must be tremendous. 10,000,000 acres in the grain belt, a conservative estimate.

Insurance Year Book, 1934.

The outstanding first mortgage farm loans of the five companies mentioned, were as follows:

The Northwestern	$ 141,066,523.40	
Mutual Benefit	91,640,000.37	
John Hancock	210,702,896.73	(a)
Metropolitan	1,237,805,549.03	(a)
Equitable	375,431,094.78	(a)
Total	$2,056,666,064.31	

(a) Character not shown.

Coming to the joint stock land banks, the following situation is shown as appears from the report of the Farm Credit Administration for 1934.

As of June 30th, 1934, there was in operation 45 joint stock land banks, including 3 in receivership. These joint stock land banks carried on their books "Net Real Estate," meaning thereby farm lands owned outright by them, of the value of $8,307,037.00.

Taking a valuation of $60.00 an acre, which would be far too high for these banks operating throughout the entire United States, it would mean that these organizations owned 1,384,506.16 acres of farm land.

It might be noted that the real estate already taken over by the 5 insurance companies mentioned, exceed the combined total assets of all the joint stock land banks of the United States, these being roughly $250,000,000.00.

It would seem trite to bring to the attention of the court, the careful methods that the Republic has always used to give its citizens a chance to acquire their own farms. The manner throughout its entire history, in which it has exercised care, as pointed out by the Court of Appeals, to see that the public domain is not concentrated in the hands of a few corporations.

Now in a crisis as vital as any that ever confronted this nation, it is contended that the entire system of American government should be overthrown, and the

theory on which it is based, and under which it has grown great, should be reversed.

This court should announce again, as it has so often in the past, as it has recently, that this is a country of free men. That the Congress has ample power to safeguard and to render secure the future of the nation, by all reasonable means.

WHAT ARE REASONABLE MEANS

We do not wish to try the patience of this great Court by being either philosophical, or metaphysical. We will try to express this idea in the language of the farmer. The man who founded the country. The class who formulated the Constitution.

Reasonable means are such as are adequate to meet the emergency while it is in existence, and which enable the nation to exist as its founders intended it should.

The Frazier-Lemke Act compels the farmer to pay the full appraised value of the property. More than any other debtor is compelled to pay. It subjects him to the hazard of having to pay a great deal more within 5 years. Hence, the secured creditor gets not only the value of the property, but there is preserved to him his chances through speculation. He is therefore deprived of nothing.

The farmer-owner is given an opportunity to remain as such. The man who has the most interest in that particular farm, is kept on it. He has a greater incentive to work and to slave, to be thrifty, resourceful, and hopeful, than any other human being on earth. If he can make good on his long chance, the millions of acres covered by delinquent mortgages are not concentrated in the hands of the few large financial institutions.

They are scattered out and owned by the hundreds of thousands of the class that have made this Republic. This serves the purpose of the founders of the nation. This allows the nation to exist as those patriots of the Constitutional Convention intended it should exist.

The emergency is evident. The means to combat it are reasonable. If successful, the nation will endure as it was intended to. If there was ever a law submitted to this Court that was constitutional beyond any cavil, it is this one.

IX

IN EVERY WALK OF LIFE A SELFISH MINORITY WILL ALWAYS CONTINUE TO THINK OF ITSELF FIRST, ITS FELLOW BEINGS SECOND. AS OUR LIFE IS A CONSTANT BATTLE AGAINST THE FORCES OF NATURE, SO NOW OUR ECONOMIC STRUGGLE IS AGAINST THE FORCES OF SELFISHNESS.*

We have in previous pages, especially in the historical review of bankruptcy legislation, culled largely from *"A History of the Bankruptcy Clause of the Constitution of the United States of America,"* by F. Regis Noel, shown how for 2,500 years, the debtor has been in a constant struggle to overcome the short sightedness of the creditor. How the very existence of nations has been at times threatened by the blindness of greed. How the state first moved to protect itself and exhibit a broadening viewpoint through the relief of the debtor's person and that of his family. Then, after centuries, came the discharge. Still later, the privilege given the bankrupt of being able to file a voluntary petition. And now for the first time in practically eight centuries, another great forward step is taken, and that

*Paraphrased from "The President Vanishes."

is by legislative enactment, the privilege given to a class of debtors, the farmer, to be the purchaser of his estate.

This has become necessary through the recognition by the Congress, that unless this privilege is accorded to the farmer, this Republic as we founded it, and as we know it, can no longer endure as such. The American people have been singularly fortunate in being able through a century and a half of abrupt and startling mutations, to preserve their theory of government. Undoubtedly this is due to the fact that this really is a land of equal opportunity and of equal voice in government.

And the Republic has been singularly fortunate, that in periods of great emergency, such as the present, its destinies have been guided by leaders unselfishly imbued with real Americanism, and that this great Court, in spite of its exalted and isolated position, has been able to find an echo in its own heart, of the heart throbs of the nation.

That it has been so well able to express the development of American jurisprudence:

> "The spirit of the time molds and shapes its law, as it molds and shapes its manner of thought and the whole current of its life. For law is the effort of a people to express its idea of right; and while right itself cannot change, man's conception of right changes from age to age, as his knowledge grows. The spirit of the age, therefore, affecting as it must man's conception of right, affects the growth both of the common law and of the statute law. But the progress toward ideal right is not along a straight line. The storms of ignorance and passion blow strong against it; and the ship of progress must beat against the wind. Each successive tack brings us nearer the ideal; yet each seems a more or less abrupt departure from the preceding course. The radicals of one period become the conservatives of the next, and are sure

that the change is a retrogression, but the experience of the past assures us that it is progress."

Joseph Henry Beale, Jr., "Jurisprudence; Its Development during the Past Century." Congress of Arts and Science, Volume III, page 227.

And well might that fine scholar say that "The progress towards ideal right is not long a straight line. The storms of ignorance and passion blow strong against it * * *"

We have noticed that every remedial law goes through four distinct phases of existence. The first is opposition in the legislature. Second, attack on its constitutionality. Third, attempt at emasculation by construction, and fourth, subversion through non-use. We are now passing the second, (in the lay mind), and entering upon the third and fourth cycles. After the law became better understood, it was recognized that Congress had carefully considered its constitutionality, with many lawyers in its membership, some the ablest in the nation. That counsel for four executive departments, as well as the Attorney General, had declared the law constitutional, as well as necessary. Then several district courts held the law constitutional, inexperienced advocates for lienholders became more familiar with the fundamental principles of constitutional law, and began to realize that every weapon in the Constitutional arsenal does not necessarily have to be displayed on the walls. Lienholders began to realize that the widespread propaganda that "Congress could not impair contracts," was but the empty vaporing of the ignorant, so, immediately, oblivious of the interest of the nation, and equally unmindful of the manner in which this nation had been founded and is intended

to endure, as they were of the elementary principles governing its organic low, they immediately began to scheme out methods by which they could emasculate it. And one of the most successful of these efforts is the Miner case.

THE MINER CASE

This is the decision by Judge Lindley in the District Court of the Eastern Division of Illinois in the case of *In re Miner*, 9 Fed. Supp. 1. In this case Filson, an attorney, trustee of a farmer at Danville, Ill., adopted the most unusual procedure, although possibly an authorized one, of filing a petition in the District Court asking for instructions as to his jurisdiction and responsibility. The construction of the Act was argued, against prominent counsel for several insurance companies, and other large lienholders. The District Judge rendered a lengthy opinion discussing the Frazier-Lemke Act, although actually not one controverted point had come before him for decision. In other words, this was not a case where the trustee, or the farmer-debtor, had applied to the referee for an affirmative order, and on a definite issue being raised, a petition for review has been filed.

Briefly, the court decided that under subdivision (3) of subsection (s) of section 75 of the National Bankruptcy Act, that since this section provided that the trustee should agree to sell to the debtor any part of his estate "with the consent of the lienholder," that if such consent was withheld, or refused, obviously the sale could not be made.

Subdivision (7) provides "if any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of

debtor's property as herein provided for * * *," then the court, after setting aside the exemptions, shall stay all proceedings for a period of 5 years, during which 5 years the debtor shall retain possession of his property provided he pays a reasonable rental therefore.

Judge Lindley decided that if the lienholder fails to file any "written objection," after refusing to "consent" to the sale, that in such event the unfortunate farmer is suspended like Mahomet's coffin, midway between the earth and the heavens.

That the entire effect of the law is nullified. That the farmer can neither purchase his property, nor retain possession of the same, but is relegated then merely to straight bankruptcy.

The learned judge appears to have overlooked section 2 of the National Bankruptcy Act, which provides:

> "That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States * * * are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, * * * * * (15) *make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act;* * * *"

Indiana counsel can testify, from personal knowledge, that a few days after the opinion in the *Miner case* made its appearance, the lienholders were circulating mimeographed copies of the opinion to the referees, judges, conciliation commissioners, and litigants in Indiana and Illinois. (And doubtless other portions of the country.)

It is pertinent here to direct the Court's attention to a suggested procedure, and an order that has been entered in Frazier-Lemke cases, by Hon. Charles A. Burnett, Referee in Bankruptcy for the Northern District of Indiana. A man who has been referee for 34 years, and who is noted throughout the Middle West as a student of bankruptcy law. To effectuate the purpose of the Act, Referee Burnett directs the trustee, *inter alia* to serve a copy of the debtor's request upon the lienholders and they

> "are hereby required and ordered, within fifteen days from the receipt of such notice, to file their written consent with the trustee to such sale at the appraised value, or their written objection to the same."*

*The complete order:

"The referee having entered a finding that the debtor has duly filed a request to purchase all of his property, at the appraised value, remaining after his exemptions have been set aside, and having entered an order that the trustee proceed to obtain the written consent, or the written objections, of lienholders to the request of the debtor, and that the same should be set out in a separate order; now, therefore,

It is ordered:

That a copy of such request heretofore filed with the referee, be served by the trustee, by registered mail, upon the respective lienholders having liens upon any part of said property, and it appearing, that _____ Company, a corporation, of _____ has appeared herein by _____, its attorney, of _____, and is the only lienholder upon said real estate, the trustee is directed to serve by registered mail a copy of the debtor's said request, upon said lienholder, by addressing a copy of the same by registered mail to its home office at _____, and also by addressing a copy to its attorney aforesaid, by registered mail, and the only other lienholder appearing to be _____, the said trustee is directed to serve by registered mail a copy of the debtor's said request upon said creditor, and the said creditor, namely, _____, a corporation, and said _____ are hereby required and ordered, within fifteen days from the receipt of such notice, to file their written consents with the trustee to such sale at the appraised value, or their written objections to the same.

It is further ordered that, upon the trustee receiving the written consent of such lienholder or lienholders he sell to the bankrupt any part, parcel or all of the remainder of the property of said estate, as requested by the bankrupt and in accordance with the terms and conditions of said section 75 of the Bankruptcy Act, but only after a meeting has been held of creditors upon ten days notice, and upon such terms and conditions as may be determined after full hearing upon the same at said meeting of creditors.

And somewhat similar is the form suggested by Hon. Fred, H. Kruse, Referee in Bankruptcy, we believe, at Toledo, and whose form is reprinted in the fourth edition of Remington on Bankruptcy, Volume 9, page 719, Unofficial Form 533.

The *Miner Case* (9 Fed. Supp. 1), bears a peculiar relationship to the case at bar. The Miner case may be viewed in one of three aspects:

(a) This Court may follow the precedent of the Circuit Court of Appeals, who decided the proceeding at bar after the Miner case had been called to its attention, but who nevertheless disposed of the proceeding at bar upon its merits, treating the Miner case as a ship passing in the night, *sub silentio* and with averted eye. On the whole, having regard to the substantive question at issue herein, the theory of a Debtor's Relief Act, and the importance of an early decision with respect to the merits thereof, counsel for the debtor believe no one connected directly with this proceeding will have cause for complaint if this Court does likewise. And which would appear the reasonable procedure.

(b) This Court may examine the Miner case critically on its merits, and, as it deserves, overrule it. And, to counsel for the debtor, "this is a consummation devoutly to be wished," for verily, as to the farmers of this country it is, "the direful spring of woes unnum-

It is further ordered that upon written objections being filed by such lienholder or lienholders, with reference to the property covered by the lien of such lienholder, of which the bankrupt has requested possession, or which has been set aside as exempt, that a meeting of creditors be held upon ten days notice, at which meeting shall be determined, after full hearing, by the court, of what will be a reasonable rental for such property, and

It is further ordered that at said meeting the court shall consider, and make such other orders, as may be necessary to effectuate the purposes of said section 75 of the Bankruptcy Act.

Referee in Bankruptcy

bered." But as this result might deprive the counsel for the lienholder in the proceeding at bar hereafter, in relying on the *Miner case* in other cases of like nature, counsel for the lienholder might prefer not to discuss the Miner Case at this time. In one sense, they would prefer to have it overruled, for that would be a tribute to their professional standing. In another sense, a devotion to their client prompts the hope on their part, the Miner Case may be sustained at some future date and do its part in enabling farm mortgages to be foreclosed.

(c) Let us assume the Court asked counsel for respondent this question:

Can respondent in this case complain of an affirmance of the order in his favor, even if this Court assigns a wrong reason for such action?

The answer should (ordinarily) be, No.

Then counsel for respondent may intimate, the Court should pass on the constitutionality of the Frazier-Lemke Act. To this the Court might reply, constitutional questions are only decided when necessary to a determination of the particular case in which they are raised.

Then if the Court should ask counsel for the petitioner what he thought about the Miner Case? To which, counsel would (probably) reply, he did not agree with its doctrine prior to its decision, but now that it has been decided, it might be "a present help in time of trouble" for lienholders, if sustained on appeal.

So that counsel for lienholder not disputing the Miner case, and the Miner case, if followed, producing a result of which counsel for debtor could not complain,

the Court might *pro forma* adopt the Miner case *pro tempore* and affirm the Radford case without deciding the constitutional issue therein involved.

The hope is expressed that the last alternative will not be adopted in this case. Thousands are anxiously awaiting a decision of the Radford case on its merits, and their hopes to that end should not be disappointed.

To understand the Miner case, it is necessary to recur to the legislative history of the Frazier-Lemke Act.

When Mr. Lemke introduced the bill into the House of Representatives and Senator Frazier into the Senate, paragraph 7 was not a part thereof and paragraph 3 did not contain the words, "and with the consent of the lienholder or lienholders," now appearing therein.

In that state of the proposed legislation, paragraph 3 if enacted, would have stood as a peremptory legislative direction that a farmer should have the privilege of being returned unto his possession on the terms therein prescribed.

Paragraph 7 was added on the recommendation of the Senate Committee on Judiciary. The adding of that paragraph in the form enacted did not of itself produce any complications, for if paragraph 3 had not been changed, paragraph 7 would have stood as an alternative provision.

But, when the bill had passed the Senate, the words "and with the consent of the lienholder or lienholders" were added in the House.

Hence:

(a) It is argued by counsel for lienholders, that paragraph 3 is operative only with the consent of the lienholder, and that such consent must be an active,

affirmative, act, not mere silence, assent or acquiescence. So far, no trouble arises.

(b) But, and here is the rub: It is claimed that inasmuch as the act, as written, does not in words require the filing of written objections to the operative force and effect of paragraph 3, a lienholder is therefore not required to consent under paragraph 3 nor file written objections under paragraph 7, and may stand mute. In that event, it is claimed, that inasmuch as no written objections had been filed under paragraph 7, that paragraph did not become operative, and the farmer was debarred of any remedy under the Act.

The foregoing reason is fallacious. It allows the letter to overcome the spirit of the Act.

Let us refresh our recollection of the principles of statutory construction.

Every legislative enactment is to be given effect if possible.

All laws are to be given a sensible construction. In case of doubt a literal construction leading to an absurdity will be rejected in favor of a more liberal one which will effectuate the object intended.

A legislative act is to be interpreted according to the intention of the legislature.

A change in the language of a statute is evidence of a change of purpose on the part of Congress.

The intent, not the letter, of the statute constitutes the law.

The language of an Act of Congress is to be read in the light of its policy.

For the purpose of ascertaining the true meaning and intention of the words of a statute, regard is to be had to the evils which called forth its enactment.

Where the meaning of a statute is doubtful, the

reason and purpose of the act may be considered.

A construction of a statute which would make it void for want of any meaning should be avoided, if possible.

8 *U. S. Sup. Ct. Dig.* (L. Co.-op. P. Co.) pp. 576, *et seq.*

"Where possible, a statute must be construed as to give it force, effect and life." (9 Fed. Supp. 446.)

What is the true purpose and intent of the Frazier-Lemke Act, approved June 28, 1934? To allow farmers to retain mortgaged farms without the consent and over the protest of the mortgagees.

Could that have been done under the Act of March 3, 1933? No, for under that law, an encumbered farmer could not accomplish anything without the consent of the lienholder.

Can a farmer, under the doctrine of the Miner case, accomplish anything without the consent of the lienholder? No—

Hence it follows that the decision in the Miner case is not in accord with the well-settled principles of statutory construction hereinbefore stated and should be overruled.

The true doctrine is this: By refusing to consent under paragraph 3, the lienholder is in effect objecting under paragraph 7. The requirement of a written objection is merely procedural in its nature, and not substantive.

"He that is not for me is against me." A man who does not consent, in effect objects, as "consent" and "objection" are antonymes, the one of the other.

"Parties litigant are not allowed to assume inconsistent positions in court; to play fast and loose; to blow hot and cold."

Bensieck v. *Cook*, 110 Mo. 173, 182.

"A party is estopped to make a defense or objection inconsistent with a position previously asserted by him, which position was successfully maintained."

21 *Corpus Juris*, p. 1226, sec. 229, and *cas. cit.*

Hence one who does not consent, cannot claim that he has not objected.

The word "consent" has been defined as "assent." (169 N. Y. Supp. 391, 393.) Defendant "made no objection to the jurisdiction of the court, but tacitly acquiesced therein. Such a conduct is clearly * * * a consent to the jurisdiction * * * "

Toledo Fence & Post Co. v. *Lyons*, 290 Fed. 637, 640.
Consult, 2 *Federal Digest* (West Pub. Co.) Bankruptcy, 293 (4).

Consent is manifestly by action, or by inaction, or by silence, from which arises an inference that consent has been given.

In re Raphael, 192 Fed. 874, 876, it was ruled that where a party proceeded against in a proceeding in bankruptcy, did not raise any objection "to the jurisdiction of the court," he thereby consented to the jurisdiction of the court.

As heretofore stated, under sec. 2, clause (15), National Bankruptcy Act, a court of bankruptcy has jurisdiction to "make such orders * * * as may be necessary for the enforcement of the provisions of this Act.

Hence, Judge Dawson could have ordered the lienholder in the proceeding at bar, either to consent to or dissent from paragraph 3, and to have treated such dissent, if entered, as an objection under paragraph 7.

Hence, when the lienholder in the case at bar, filed written objections to paragraph 3 (Rec., p. 78), the lienholder was acting involuntarily, and not waiving its constitutional objection.

Therefore, the case should be decided on its merits.

THE FOURTH STAGE.

The embryos of the fourth stage are now already making their appearance. In the Monticello, Indiana, Daily Journal for March 15th, 1935, is a speech by William F. Collins, who it is stated "represents the farming interests in the Middle West of one of the large insurance companies."

According to the newspaper report, he paid his respects to the law under consideration as follows:

> "Mr. Collins denounced the Frazier-Lemke bill, declaring that all a debtor needed to do under its provisions was to feel himself 'aggrieved' in order to take advantage of bankruptcy. He said that if this form of legislation becomes popular, the business men will wish to have it applied to them, also, and that credit sources will be completely dried up from fright. 'No investor is going to be foolish enough to loan money unless he believes he has a reasonable chance to get it back', Mr. Collins said."

And yet, just before this statement, (the gentleman evidently being unaware of section 77 and 77B, giving "business men" financial reorganization privileges) the speaker said:

> "'Give the farmer 80 cents for his corn and $8.50 for his hogs the next year,' Mr. Collins said, 'and you will witness a real era of prosperity. The farmer needs everything, and he is a good spender when he has money.' He pointed out there was hardly a farm but that needs fencing, painting and roofing. Providing the present prices hold up the farmers will spend four and a half billion dollars in the next year for lumber, hardware and other repairs, which ought to be enough to start the machinery buzzing in the mills."

So the gentleman is going to make the country prosperous by preventing the farmer from financially reorganizing, by turning him out into the byways and the sideroads with his chattels and children. And in many cases, not even his chattels. *Do either hired hands or tenant farmers paint or repair?*

CONCLUSION

Joseph H. Beale, Jr., in the speech to which reference has been made, stated:

> "The most striking characteristic of the progress of jurisprudence in the first half of the century was its increasing recognition of individual rights and protection of individuals. Humanity was the watchword of legislation; liberty was its fetich. * * * Bankruptcy was treated as a misfortune, not a crime."

If this court will indicate that Congress has the constitutional right to give to a farmer the privilege of being the first purchaser of his bankrupt estate, that lienholders have no constitutional right to a distribution of the assets of a farmer who complies with the Frazier-Lemke Act, that it is the traditional policy of the Government, and the policy that has made the Nation great, to keep the farmer on his own farm,

a new epoch will have begun in the liberties of the people. If this law is held constitutional, the spoliation of agriculture is prevented. We say this advisedly. Imposing on the honesty of the farmer, the lienholders have induced him to denude himself of the major portion of his working capital to satisfy their desires. Both parties have been too short sighted, to see that by doing this a vicious circle was created, which worked to the detriment of each of them. The farmer in his haste and honesty to pay his debts, put himself in a position where he could not handle himself in the future. The lienholders, by accepting his sacrifices, got an honest debtor in a position where he could not possibly make good in the future.

A favorable decision by this Court will change all that. The honest, thrifty, industrious farmer, will be given an opportunity to make good. On the other hand, the lienholders if they wish, can immediately obtain very substantial sums from the government, by accepting the amounts offered by the Federal Land Banks under the Emergency Farm Mortgage Act of 1933, and which in many cases, are equal to the appraised values as found by the District Court. And which amounts are on an inflated plane and do not entail large loss to the mortgage holder. Numerous cases can be cited, where the differences between the debts and the amounts offered by the Land Banks are only 2 or 3 percent.*

While it is true that in the instant case no application was made to the Land Bank, such is not the general custom. The Farm Credit Administration has records of thousands upon thousands of unclosed applications,

*This is because the Federal Land Banks are required by the provisions of the Emergency Farm Mortgage Act of 1933, to take the 1909-1914 prices as a basis. Whereas appraisals in the District Court are usually based on the present market value.

due solely to the failure of the mortgage holder to accept the amounts offered by the Government.

We also wish to emphasize, that the validity of this legislation does not necessarily depend upon the existence of power exercised to meet an emergency. But in any event, the emergency does exist.

As Hon. William Lemke said in the classic brief he filed in this case in the District Court:

> "This Amendment marks a new epoch—from now on the debtor is going to be considered as well as the creditor. The Bankruptcy Act is going to become an act of conservation and not an act of wreckage."

It is respectfully submitted, that this court should hold the law constitutional, that the construction given it in the *Miner case* be disapproved, and that the essential position of the farmer in the future of the Republic be assured.

Respectfully submitted,

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APPENDIX

NEEDED: A DECLARATION OF MENTAL INDEPENDENCE.

Change is uncomfortable, but we should recognize that it is inevitable. Because it is uncomfortable to change, many refuse to face facts. We have our preconceived notions and we like to see things go along in the manner to which we have been accustomed. When they are not traveling in that direction we throw up our hands in horror and say the system is all wrong. We do not appreciate that events and people must compromise. Sometimes people are strong enough to compromise events; more often the events force people to compromise.

In many respects we must break with ideas of the past. Our life has changed. Our work has changed. Physical processes have changed. Boundaries have changed. The world has changed.

The problems that confront us today are difficult of solution. They will never be solved by a closed mind. It requires courage to meet these problems with an open mind. An open mind does not mean a mind that will accept new ideas, new plans, new thoughts, without inquiry. It does mean a mind that will carefully appraise new thoughts, new plans, new programs, without prejudice and, after having made that appraisal, will then weigh the value and necessity of these new programs against the old order of things. It further means that if we find a new order necessary to meet present day conditions, we will have the courage to accept it.

We are floundering in many of our present problems because of our unwillingness to admit that change is inevitable and because of our habitual desire to deny the necessity of anything that has not heretofore seemed necessary. It would be well to pause and consider that this nation itself resulted from change. America needs an open mind, a Declaration of Mental Independence.

HENRY H. HEIMANN,
Executive Manager, National Association of Credit Men.

In The

DISTRICT COURT OF THE UNITED STATES

For The Western District of Kentucky
Paducah Division

In the Matter of

WILLIAM W. RADFORD, SR.,
Debtor.

In Bankruptcy.

ADDITIONAL BRIEF FOR DEBTOR

The following observations are submitted for the consideration of the Court, in view of the decision of Judge Chesnut (D. C. Md.) on September 20, 1934, *In re.* Bradford, copy of which has been furnished the Court.

Judge Chesnut, at the outset of his opinion, italicizes the word "farmers." He stresses the fact that Section 75, National Bankruptcy Law (under attack in the case at bar), relates "only to farmers."

Later, in the course of his opinion, in stating his reasons for a judicial denunciation of the Frazier-Lemke Act, he said of the Minnesota Mortgage Moratorium Act, upheld by the Supreme Court of the United States (290 U. S. 398): "The [Minnesota] law applied uniformly to all mortgages and not alone to those of one specially favored class."

The issue of classification is settled, at least so far as this Court is concerned, by the decision in *Leidigh Carriage Co.* v. *Stengel* (6 C. C. A.), 95 Fed. 637, 646, *et seq.*

The opinion just cited is regarded by the textwriters as a leading case on this question. (See also, 186 U. S. 186.)

No limitation has been "placed upon Congress as to the classification of persons who are affected by such laws."

1 *Brandenburg on Bankruptcy* (4 Ed.), pp. 8, 9, sec. 6 (citing *Leidigh Carriage Co.* v. *Stenglo, supra*).

To the same effect:

1 *Remington on Bankruptcy* (4 Ed.), p. 26, sec. 4.
Black on Bankruptcy (4 Ed.), sec. 7.
1 *Collier on Bankruptcy* (13 Ed.), p. 8.
7 *Corpus Juris*, p. 19, sec. 9.
Title 11, U. S. C. A., p. 4, sec. 1.

Judge Chesnut, in the opinion under review decides all of the precedural questions raised by the lienholder in the *Maryland case* in favor of the debtor.

He next upholds the general principles of the Bankruptcy Act of March 3, 1933, as amended June 28, 1934, and refutes many of the constitutional claims made by the lienholder in the *Kentucky case, e. g.*, he decides:

Under Section 75, Act of March 3, 1933, of which Frazier-Lemke Act is an amendment and therefore a part, a stay of proceedings to foreclose a mortgage in a State Court "is authorized by the subsection (s) [the Frazier-Lemke Act], unless (a) It is unconstitutional, or unless (b) The title to the property had passed from the debtor by virtue of thef oreclosure proceedings before the filing of the petition in this case."

Judge Chesnut then decided that the exception hereinbefore quoted as (b) did not apply to the *Maryland case* on the ground that the property in question in that case "is still that of thed ebtor subject, of course, to the legal consequences of the mortgage."

In the *Maryland case*, there had been a sale under

foreclosure, but the State Court, as was necessary under the state practice, had not ratified the sale, nor had a deed been issued to the purchaser.

This left for consideration in the *Maryland case*, the exception hereinbefore noted as (a). Discussing this contention, Judge Chesnut ruled that "the provision now made constituting in substance a five year moratorium for farmers is novel and without precedent in our bankruptcy legislation," did not invalidate the Act.

The next subject discussed by him was the due process clause of the Fifth Amendment. To his statement of the rule in that respect, no exception is taken.

Judge Chesnut thereupon stated the effect of the Act of Congress as bearing on the rights of the mortgagee, contrasting the prior applicable provisions of the laws of Maryland relating to the foreclosure of mortgages.

The theory that the reasonableness of an Act of Congress is to be determined:

(a) By a critical analysis of the local statute otherwise applicable;

(b) Contrasting such analysis with a similar treatment of the appliacble congressional legislation; and then

(c) Holding that the Act of Congress is unreasonable, therefore void, because it differs in material respects from a State statute;

is quite novel in our jurisprudence. So far as the writer is advised, such a decision is without precedent and we hope without authority.

A bankrupt law is required to be uniform. Under Judge Chesnut's theory, a Federal Court in Maryland is required first to analyze the statutes of that State in order to set up an ascertainable standard of comparison as to reasonableness, then study the laws of forty-seven

other States (for he says, after analyzing the Maryland law on the subject under discussion, "substantially the same is believed generally to prevail elsewhere in this country"), and next decide that the power of legislation granted to Congress by the Constitution is limited by the extent to which such power has theretofore been exercised by State legislative bodies.

What becomes of the supremacy of the Federal legislative power as to all subjects within its jurisdiction if such a course of reasoning were adopted?

Is Congress to be limited:

(a) To the lowest level of State action;

(b) Endeavor to strike an average of State legislative concept; or

(c) Be free to emulate the highest degree of State legislative achievement?

All these questions arise, and prompt this further inquiry:

Are the laws of a State, challenged as unconstitutional under the Fourteenth Amendment, to be denied validity because substantially different from the laws of other States?

Suppose Maryland passed a duplicate of the Frazier-Lemke Act, would the latter thereafter and on that account receive the approval of Judge Chesnut?

> "The Bankruptcy Act having been passed by Congress pursuant to the power delegated to it by the Federal Constitution is the supreme law of the land and its provisions are paramount to any State statute."
>
> *Gilbert's Collier on Bankruptcy* (2 Ed.), p. 6, Sec. 1, sub. d.

"The bankruptcy law is paramount * * *" (190 U. S. 27).

"* * * State laws to the extent that they conflict with the laws of Congress, enacted under its constitutional authority on the subject of bankruptcies are suspended" (245 U. S. 613).

"The power of Congress to establish uniform laws on the subject of bankruptcies throughout the United States is unrestricted and paramount" (278 U. S. 265).

Consult, *McCulloch* v. *Maryland*, 4 Wheat. 316; *Sturges* v. *Crowninshield*, 4 Wheat. 122.

But according to Judge Chesnut, a law on the subject of bankruptcies:

(a) Is not valid if not reasonable;

(b) Is not reasonable if more liberal than the laws of the State in which the debtor lives.

Such a course of reasoning, if upheld, would in effect nullify the recognized and declared supremacy of congressional action on a subject within its jurisdiction, for the reasonableness, hence the validity of congressional action, would then depend on and be limited by State action.

Judge Chesnut points out his concept of the changes made by the Frazier-Lemke Act in the rights of the mortgagee:

"The most important are: (1) His right to realize on the security, in event of default, is suspended for five years."

The right of a State to suspend the right of a mortgagee to foreclose his mortgage was upheld in the *Minnesota Mortgage Moratorium case* (290 U. S. 398).

And the mortgagee, under the Frazier-Lemke Act, does realize on his security to the extent of receiving a reasonable rental for the property, which is all, as a practical proposition, he might otherwise receive in the present state of agricultural depression in this country.

Judge Chesnut then adverts to the five-year period of moratorium granted by the Frazier-Lemke Act: "This period is fixed and absolute * * *"

The fact that a time for redemption is fixed by statute at an absolute period does not of itself render such statute invalid.

Judge Chesnut criticizes the period of redemption fixed in the Frazier-Lemke Act because it is for a fixed and determinate the period of time.

An examination of Martindale-Hubbell's Law Digests discloses:

a) Delaware, District of Columbia, Florida, Hawaii, Louisiana, Maryland, Mississippi, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Philippine Islands, Puerto Rico, Rhode Island, South Carolina, Texas, Virginia, West Virginia and Wisconsin have no statutory period of redemption after completion of foreclosure, except as hereinafter specified.

(b) Statutory periods of redemption after completion of forecloseure are provided as follows:

Alabama. Two years.
Alaska. One year.
Arizona. Six months.
Arkansas. Twelve months.
California. One year.
Canal Zone. One year.
Colorado. Six months.
Connecticut. Time fixed by court in entering decree.
Georgia. Ten years.
Idaho. One year.
Illinois. Twelve months.
Indiana. One year from institution of suit to foreclose.
Iowa. One year.

Kansas. Eighteen months. During the period of redemption, the owner is entitled to the possession of the property and the rents, issues and profits thereof.

Kentucky. If property sold for less than two-thirds of appraised value, execution defendant has one year in which to redeem during which time the execution defendant may remain in possession thereof.

Maine. One year.

Massachusetts. Three years.

Michigan. Six months.

Minnesota. One year.

Missouri. One year on giving security provided by statute.

Montana. One year.

Nevada. Six months.

New Mexico. No sale until sixty days after decree. Redemption within nine months after sale.

North Dakota. One year.

Oregon. One year.

South Dakota. One year.

Tennessee. Two years.

Utah. Two years.

Vermont. Six months.

Washington. One year.

Wyoming. Six months.

Moratoriums exist in Michigan in the discretion of the Court not beyond March 1, 1935; Minnesota as quoted 290 U. S. 398; New York for a definite period; Ohio in the discretion of the Court; Oklahoma for nine months and thereafter in the discretion of the Court; South Dakota two years on the conditions stated in the statute; Texas and Wisconsin respectively in the discretion of the Court.

In Iowa, Kansas and Minnesota, during the period of redemption, the mortgagor remains in possession of the mortgaged premises.

Surely this general recognition of the legislative right to fix a definite period of redemption is conclusive proof that any criticism of such practice is quite unwarranted. Maryland has no period of redemption. A lifetime was spent in the practice of the law in Maryland by Judge Chesnut. *Res ipsa loquitur.*

Judge Chesnut overlooked the effect of *Chastleton Corporation* v. *Sinclair,* 264 U. S. 543. In that case, the Court said, referring to an Act of Congress continuing rent regulation in the District of Columbia in force from May 22, 1922, to May 22, 1924:

> "A law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or the facts change even though valid when passed."
> "It is always open to judicial inquiry whether the emergency still exists upon which the continued operation of the law depends" (290 U. S. 442).

Later, in the course of his discussion, Judge Chesnut recognized that certain cases in the Supreme Court of the United States "do decide that in a legislatively declared emergency directly affecting the public interest, laws of temporary duration, proportioned to the emergency, and terminating with it in effectiveness, may validly create a reasonable moratorium against the enforcement of their legally valid claims by landlords and mortgagees, on condition of payment to them of the reasonable rental value during the period of the moratorium."

He next ruled: "The present law goes much further" than the cases cited. He noted what are claimed to be important differences in the *Maryland case,* "* * * as contrasted with the *Minnesota Mortgage Moratorium Act.*" These differences are thus enumerated:

(a) "There [in the *Minnesota case*], the time

could not exceed two years and one month, and was not arbitrarily fixed at all but to be determined by the Court and was terminable sooner if conditions warranted."

So far as this last mentioned point of difference is concerned, the cases hereinbefore cited (*Minnesota Mortgage Moratorium Act case* and *District of Columbia Rent case*), decide that a Court may control the operative term of emergency legislation. So, whether Congress fixed a time or whether it did not, the net result is that in the last analysis of the situation, the Court determines the length of time that the law shall operate.

In connection with the differences between the Minnesota Mortgage Moratorium Act and the Frazier-Lemke Act, Judge Chesnut, in the Maryland decision, used this language: "And even more importantly [in the *Minnesota case*], merely the time for the exercise of the right of redemption by the mortgagor * * * might be extended by the Court." That is true in effect under the Frazier-Lemke Act. The Court, in passing on the reasonableness, hence the validity, decides, under the cases cited *supra*, has the emergency ceased? Thereby in effect the Court fixes the period of redemption.

Judge Chesnut regards as important the fact that in the *Minnesota case*, the law contemplated "the full payment of the debt," that "the integrity of the mortgage contract was not otherwise impaired," and that there "was no authorized 'scaling down' or 'partial cancellation' of the debt."

Judge Chesnut forgot, in comparing a State statute with a Federal statute, that he was considering two different subjects, each governed by varying constitutional provisions.

(a) A State may not impair the obligations of a contract (U. S. Const., Art. 1, Sec. 10, clause 1).

See *U. S. C. A., Constitution*, Part 2, p. 31; *Sturges* v. *Crowninshield*, 4 Wheat 196.

Hence a State may not pass an insolvency law as applying to a pre-existing debt.

(b) But Congress in the enactment of uniform laws on the subject of bankruptcies may impair the obligation of contracts (186 U. S. 186).

> "The very essence of a national bankrupt system is the doing away with pre-existing contracts * * * and the making of such reasonable exemptions of property to the bankrupt as will keep him from absolute poverty, give him some means to commence life anew, support and educate his family, and make him a good and useful citizen.
>
> "Upon the subject there is no constitutional inhibition imposed on Congresss, and it can exercise the full powers of sovereignty, and is only restrained by the broad principles of justice and enlightened statesmanship and the responsibility felt by its members to their constituents."
>
> *In re Vogler*, Fed. Cas. 16,986.

The subject of "scaling down" of debts is treated in our former briefs, and need not be further considered.

As to a law applying "to those of one specially favored class," quoting from Judge Chesnut, that issue as already stated, is precluded, so far as this Court is concerned, by *Leidigh Carriage Co.* v. *Stengel*, 95 Fed. (6 C. C. A.) 637, 646.

The next point of difference noted by Judge Chesnut between the Maryland applicable law and the Frazier-Lemke Act is thus stated:

> "(2) (a) At the end of the [five years] period the title to the security is transferred to the mortgagor,
>
> "(b) Upon payment of a sum determined by

appraisers (subject to a somewhat uncertain judicial review),

"(c) And which may be for an amount substantially less than the mortgage debt."

As to (a), in the liquidation of the estate of a debtor, the title to his property must be transferred to somebody. Hence the fact that the title of the debtor, in certain circumstances, is revested in the mortgagor, is not of itself controlling. If that were otherwise, a foreclosure law which operated to transfer the title to a mortgagee would likewise be invalid.

Prior to the Frazier-Lemke Act mortgages were foreclosed in many States through the process of a Court of equity. In such States, the mortgagee obtained title to the property by a foreclosure sale at which the bid was not necessarily equal to the amount of the debt. The sale, in such cases, was subject to the approval of the Court. The Court, in approving the sale, determined in effect the reasonableness of the bid, and hence considered the value of the property. In the case at bar, that value for forced sale purposes is fixed in the answer at $5,000, which is about two-thirds of the amount of the judgment. Upon the confirmation of such a sale, the holder of the mortgage becomes the new owner of the property, leaving the former owner in debt, and without a farm. This debt was discharged in bankruptcy.

The net result of such a process was to destroy, on the part of farmers, land ownership, a natural incident of human life, reaching in history to the Garden of Eden, for, we are told, Adam and Eve became the owners of the Garden of Eden in fee simple, except as limited by a condition subsequent (Consult Lev. 25: 1 Kings, 4:25; 2 Kings, 18:31; Isa. 36:16; Mic. 4:4).

So Congress, instead of selling the land to the holder

of the mortgage at a price approved by the Court, reversed the process. The land is sold to its former owner at a price fixed by the Court.

A holder of a mortgage does not have a constitutional right to become the unconditional owner of the mrtgage security. Centuries after Magna Carta was decreed, courts of equity invented the doctrine known as the equity of redemption. This doctrine prevails in Kentucky and in Maryland.

As to the portion of a mortgage debt remaining unpaid after the foreclosure of a mortgage:

(a) Prior to the approval of Frazier-Lemke Act, a mortgage debtor could have filed a voluntary petition in bankruptcy and discharged such an obligation. If he had assets not sold under the foreclosure of the mortgage, the mortgage creditor would have received his due share in such assets by a dividend on that part of his claim allowed as an unsecured claim. If the mortgage debtor had no assets not sold under mortgage, the creditor received no dividend on his unsecured claim.

(b) The same result follows under the Frazier-Lemke Act, with this important difference: The farmer, not the creditor, becomes the owner of the farm.

The fact that the Act gives a farmer five years in which to buy the farm, is not unreasonable. In the Katy foreclosure cited in our Rejoinder Brief, the Court waited six years for a railroad reorganization to be consummated. The *Orient case*, cited in like manner, occupied the time of Judge Pollock over fourteen years.

Originally, in England, an equity of redemption, unless foreclosed by a Court of equity as an act of grace, and not of right, was outstanding twenty years.

As to the intimation of Judge Chesnut, that a farmer may repurchase the farm formerly owned by him "upon payment of a sum determined by appraisers (subject to

a somewhat uncertain judicial review)", the sum of which the farmer is required to pay in order to be returned unto his possession, and again dwell under his own vine and fig tree, is determined by the Court. The fixing of such sum is a judicial act which must be performed by the Court just as a Court in a decree of foreclosure may fix an upset price and refuse to confirm a bid at a judicial sale deemed inadequate by the Court.

As to the criticism by Judge Chesnut, that the price paid by a farmer for his prior possession in the circumstances stated in the Frazier-Lemke Act, may be "for an amount substantially less than the mortgage debt," such fact is not controlling. No law requires a creditor to bid the full amount of the mortgage debt in order to acquire the title to the land. Why should a debtor be required to do more than a creditor, in order to acquire title to land which neither of them owns in fee simple?

Next, Judge Chesnut says of the Frazier-Lemke Act: "(3) No provision is made for a deficiency claim by the mortgagee against the bankrupt's estate."

The Frazier-Lemke Amendment is Subdivision (s) of Section 75 of National Bankruptcy Law. Hence, a part of Section 75. Section 75 is a part of the bankruptcy law, hence to be construed in connection with the whole Act of which it is a part.

A mortgage creditor proves his claim against a bankrupt under the Frazier-Lemke Act just as he would have proved his claim against a debtor if the Act had not been passed. If the debtor has other assets, the mortgage creditor is paid a dividend. If there are no assets, the mortgage creditor receives no dividends. This result is the natural incident of any law on the

subject of bankruptcies, and is not peculiar to the Frazier-Lemke Act.

Judge Chesnut also mentions the fact that under the Frazier-Lemke Act, a farmer may have "at least a six-months' moratorium without any compensation therefor to the mortgagee." This provision in redemption statutes is very common. See analysis of such statutes, *ante*, pp. 8, 9.

Under railroad foreclosures, the receiver in charge operates the road, applying its income to operating expenses, without paying the bondholders interest or rental. Under railroad reorganizations, stockholders and general creditors in the old company are usually accorded an interest in the new without paying in full past due interest. Why should the same consideration not be extended to a farmer?

The Court is dealing with a bankrupt. All his property except his state exemptions has passed into the custody of the Court. The value of the farm depends upon its continued operation. Shall it grow into weeds and be a wilderness, or shall the farm continue to be cultivated? Where could the mortgage holder find a tenant able to pay his rent in advance?

Why does Congress not have the right to grant a farmer an exemption from the payment of rent for six months, just as it may grant in the nature of an exemption the title in fee simple to a farm to a mortgage debtor, if such action be not arbitrary or unreasonable?

Again, if Judge Chesnut is of opinion that the rent should be paid in advance, he should remember that he is the judge of a court operating on equitable principles, and has the right, according to the maxim, "he who asks equity must do equity," to require such payment to be made as a condition of granting the relief asked in the Maryland case. To declare an entire statute void

for this reason alone would be an instance of arbitrary and unreasonable action by a person holding the office of judge outdistancing in that particular, the Act which Judge Chesnut has declared invalid.

Recurring to the opinion in the Maryland case: "It is obvious that the changes are material and prejudicial to the mortgagee, and not only his remedies but also his substantial rights are materially impaired;"

This statement reveals the error of thought permeating Judge Chesnut's opinion. He confuses the law of a state which may not impair the obligation of a contract (witness his citation of *Worthen v. Thomas*, 54 Sup. Ct. 816, dealing with a state statute), with an Act of Congress on the subject of bankruptcies which may impair the obligation of a contract (186 U. S. 186).

How could a bankruptcy law be passed giving a debtor any relief which did not materially change and impair the rights and remedies of a creditor. Such is the essential purpose of a law of the character named.

Judge Chesnut characterizes the effect of the Act in this manner: To "scale down existing farm indebtedness to the value of the property." And continues: "The result is obviously a 'partial cancellation of the debt,' and necessarily the impairment of the integrity and terms of the mortgage indebtedness."

To scale down and partially, sometimes wholly, cancel a debt is the object of a law on the subject of bankruptcies. To condemn such a law for the reason stated would make it impossible to pass such a law unless it were limited to the sole purpose of paying money to a creditor and gave no relief whatever to a debtor. The learned Maryland Judge continues: "In another aspect the substantial effect is to transfer the property of one person to another by requiring the mortgagee to sell his interests in the property to the mortgagor at a price

which the former has no part or influence in fixing."

Here is a curious example of a failure to understand the essential functions of a Court. A party to a judicial proceeding does not have "any part or influence" (as those terms are usually understood), in moulding judicial action. The final action is that of the Court, in which no one has any part except the Court, and in which the only influence properly functioning, is the influence of reason and justice, a law which has no respect for persons and is never influenced by any party to an action.

What "part or influence" has a debtor in fixing the price at which his land passes from him by virtue of a judicial sale?

As to taking "private property for private use:" Heretofore the law has sedulously enforced the right of creditors, and often knew not the rights of a debtor. Congress has legislated to change the angle of reflection, and such change does not impair the gladsome light of jurisprudence, but gives it a new vision, where "they shall sit every man under his vine and under his fig tree, and none shall make him afraid; for the mouth of the Lord of hosts hath spoken it" (Micah, 4:4).

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The Agricultural Situation

A Brief Summary of Economic Conditions

Issued Monthly by the Bureau of Agricultural Economics
United States Department of Agriculture

Subscription price: 25 cents per year; single copy, 3 cents; foreign price 45 cents; payable in cash or money order to the Superintendent of Documents, Government Printing Office, Washington, D.C.

Washington, D.C. February 1, 1935 Volume 19, No. 2

A LEAN WINTER FOR THE LIVESTOCK INDUSTRIES

Throughout the North, where the livestock industries loom large, it is fortunate that the earlier part of the winter was not as severe as last month. The mild earlier weather together with the reduction in numbers of animals and Government emergency measures eased the critical feed situation that had been anticipated. But last month was a hard one.

Livestock men are now living through the real aftermath of the drought. The feed supply is short. One has only to glance at the figures of stocks of grain on farms January 1 to get this feed picture. Farm stocks of corn amount to 800,000,000 bushels, which is about 300,000,000 bushels under the shortest supply previously recorded. Then, it also appears that from October through December less than 580,000,000 bushels of corn have been used in this country, as compared with about 920,000,000 bushels used in the same period last year. That gives an idea as to how the feeders have tightened up. Of course there are fewer pigs to be fed. But men everywhere are feeding with one eye on the granary and mows and the other on the calendar.

A typical result of the tight feed situation shows up in the figures on milk production. Last month the production per cow for the entire country was the lowest of which this Bureau has record: 10.88 pounds compared with a January 1 average of 12.13 pounds. A decline of 2 percent during December contrasted sharply with the usual increase of 2 to 5 percent in that month. Dairymen generally report that they are feeding about 20 percent less concentrates than a year ago.

Speaking more broadly of the dairy situation, however, one can see some daylight ahead—for those who can hold out. More than 2 million cows were disposed of last year, the greatest reduction in the 5 years recorded. The proportion of heifers in the herds is unusually low. In other words, the herds have been drastically reduced; milk-cow prices are at the low point of the cycle (the last peak in that

It has been suggested that instead of the index of prices paid by farmers for goods alone, the parity standard should include also the prices of services, such as are represented by farm wage rates, cash payments on farm real estate, and interest payments on farm mortgages. In 1929, when prices paid by farmers averaged 153 percent of pre-war, the inclusion of these cost items would have given an index of 185, or a parity standard 8 percent higher than prices paid for goods alone. At the present time, however, when farm wage rates are relatively lower than prices paid by farmers for goods, and interest and taxes payable have declined to 160–170 percent of pre-war instead of 231–243 percent in 1929, the combination of prices of goods and services is only 127 percent compared with 126 percent for commodities alone. This combination is a broader standard, but being essentially a price measure, it does not reflect the changes in the volume purchased from year to year, or as between the post-war and pre-war years.

An attempt to take changes in volume of both sales and purchases into account is made in table 1. From estimates of gross farm income as published by the Bureau of Agricultural Economics, there have been deducted selected expense items which constituted in the post-war years approximately 90 percent of the total production expenditures as estimated by the Bureau, exclusive of the labor of the farm operator and his family. The balance thus obtained is available as return for the farmer's investment for his labor and gives approximately the "net" income available for the goods and services used in the farm home to maintain the farmers' standard of living. Between 1909 and 1929, gross income increased 77 percent, and estimated expenditures increased 141 percent.

In 1932 gross income was 21 percent below pre-war, selected expenditures 27 percent above, and the balance available for other purposes 44 percent below. These comparisons do not take into account the inventory gains up to 1920 nor the losses in the post-war and post-1929 depressions.

"Net" income attained a purchasing power of 128 percent and 136 percent of pre-war during 1917 and 1918, declined to 65 percent in 1921, reached 97 percent in 1925, and 91–92 percent in 1928–29. In this depression, it declined to 52 percent in 1932 and by 1934 recovered to 79 percent. The year to year changes in this series are shown in figure 2.

Table 1.—FARM INCOME AND EXPENDITURES AND RATIO OF BALANCE TO EXPENDITURES

Year	Gross income [1]	Selected expenditures [2]	Balance available	Gross income	Selected expenditures	Balance available	Prices paid for commodities bought for family maintenance	Ratio of available income to expenditures
	Million dollars			Percent (1910–14=100)				
1909	6,238	1,886	4,352	92	87	95	96	99
1914	7,028	2,338	4,690	104	108	102	102	100
1917	12,832	3,543	9,289	190	163	206	147	133
1918	15,101	4,186	10,915	223	193	238	177	135
1919	16,935	4,820	12,115	251	222	264	210	126
1921	8,927	4,136	4,791	132	190	104	161	65
1925	11,968	4,691	7,277	177	216	159	154	97
1929	11,941	5,246	6,695	177	241	146	158	92
1932	5,331	2,758	2,573	79	127	56	108	52
1933 [3]	6,256	2,553	3,703	93	117	81	109	74
1934 [3]	7,200	2,800	4,400	107	129	96	122	79

[1] Calendar years for livestock and livestock products, crop years for crops, as reported by the Bureau of Agricultural Economics.

[2] Includes: (1) Wages (cash and board); (2) feed; (3) fertilizer; (4) taxes; (5) mortgage interest (total); (6) grazing expense; (7) purchases and operating expenses of all farm machinery (including tractors, trucks, and one-half automobiles); harness and saddlery.

[3] Including rental and benefit payments.

The total of these selected items was equivalent to 94 percent of all production expenses for the 10-year period 1924–33, as reported in the August 1934 Crops and Markets, p. 318. However, these reported production expenses did not include board as a part of the wage bill. If board (which is among the selected items enumerated above) is added to the total production expenditures reported, then the selected items are equivalent to 90 percent of the total for the 10-year period. The detailed expenditure figures from 1919 through 1933 were furnished by the Bureau of Agricultural Economics. Prior to 1919 estimates are partially those of the Bureau and partially those of the Agricultural Industrial Relations Section of the Agricultural Adjustment Administration.

Table 2.—AGRICULTURE'S SHARE OF NATIONAL INCOME, 1909–34 [1]

Year	National income	Contributed by agriculture		Year	National income	Contributed by agriculture	
	(Million dollars)	(Million dollars)	Percent		(Million dollars)	(Million dollars)	Percent
1909	26,420	4,983	18.9	1922	57,926	7,200	12.5
1910	28,024	5,218	18.6	1923	65,949	8,026	12.2
1911	28,376	4,815	17.0	1924	68,461	8,525	12.5
1912	30,358	5,294	17.4	1925	73,067	9,089	12.4
1913	31,909	5,133	16.1	1926	74,954	8,214	10.9
1914	31,669	5,081	16.0	1927	76,007	8,371	11.0
1915	33,083	5,488	16.6	1928	77,291	8,109	10.5
1916	38,884	6,631	17.1	1929	79,702	8,254	10.4
1917	46,575	9,188	19.7	1930	72,890	6,320	8.7
1918	54,784	11,205	20.5	1931	60,796	4,689	7.7
1919	59,550	12,183	20.5	1932	47,960	3,582	7.5
1920	66,928	11,067	16.8	1933	46,090	4,587	9.9
1921	55,430	6,967	12.6	1934 [2]	51,920	5,287	10.2

[1] Realized income from production of goods and services based on data of (1) National Bureau of Economic Research as published in America's Capacity to Consume by Brookings Institute, (2) U. S. Department of Commerce, and (3) Bureau of Agricultural Economics U. S. D. A. Extension of data for 1929–34 made in Agricultural Adjustment Administration.

[2] Preliminary estimate.

Table 3.—NATIONAL AND FARM INCOME PER CAPITA, 1909-34

Year	Population (000)		Per capita income[1]			
	Total United States	Farm	Total United States	Farm[2]	Ratio farm to total	
					Annual	1910-14=100
					Percent	Percent
1909	90, 832	32, 125	$294	$155	53	105
1914	97, 220	31, 802	326	159	49	97
1917	101, 466	31, 753	459	289	63	125
1918	102, 880	31, 707	533	353	66	133
1919	104, 266	31, 660	571	385	67	134
1921	107, 875	31, 703	516	220	43	85
1925	114, 035	31, 061	641	293	46	91
1929	120, 694	30, 237	669	273	41	82
1932	124, 511	31, 241	385	115	30	60
1933	125, 197	29, 242	368	141	38	76
1934	126, 009	32, 509	412	163	40	79

[1] Population figures for 1910 to 1929 interpolated. Non-census years following 1930 are estimates by the Bureau of Agricultural Economics.

[2] Based on estimates of national income and on amounts contributed by agriculture derived primarily from farm production, other sources of income to farm people not included.

THE FARMERS' SHARE OF THE NATIONAL INCOME

The national income, if defined as realized income from the production of goods and services, amounted to $26,400,000,000 in 1909, $79,700,000,000 in 1929, and $51,900,000,000 in 1934. The amount attributed to agriculture is about $5,000,000,000 in 1909, $8,300,000,000 in 1929, and $6,300,000,000 in 1934. (See table 2.) These amounts attributed to agriculture are obtained from the estimates of gross income by deducting only certain expenditures such as property taxes, mortgage interest on the farm home, and certain operating expenditures, leaving a balance which includes farm wages and most of mortgage interest payable. For the purposes of this statement, no attempt has been made to deviate from the generally accepted definition of farm income in conformity with the definition of national income. It should, however, be noted that the deductions from gross income made to obtain net farm income (in table 1) are greater than the deductions made to obtain the agricultural contribution to the national total (in table 2).

The share contributed by agriculture was 18.9 percent in 1909 and 16.0 in 1914. In 1918 and 1919 it rose to 20.5 percent, then declined abruptly to 12.6. In the period 1926–29 the share ranged between 10.4 and 11.0 percent, and then reached the historic low of 7.5 percent in 1933. By 1934, if benefit payments and receipts from the excess sale of livestock in the drought areas are taken into account, it reached 10.2 percent.

The farmer's share of the national income has of course declined during the past century as the percentage of people living on farms or engaged in agriculture declined. It is, therefore, not surprising that the agricultural share of or contribution to the national income was lower in the post-war period than in the 1910–14 period. But during the post-war period it was abnormally low as appears to have been the usual tendency in periods of generally declining prices.

In 1870 when those employed in agriculture constituted 53 percent of the total working population, farmers received about 30.5 percent of the national income. In 1900 when 38 percent were gainfully occupied in agriculture, agriculture's share of the national income was about 21 percent and in 1920, when 26 percent of the gainfully occupied were in agriculture, their share of the national income was about 17 percent. The yearly percentages from 1909 to 1934 are given in table 2 and in figure 3.

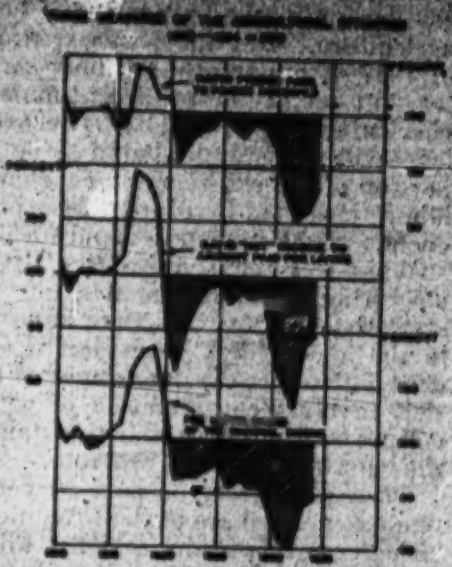

FIGURE 2.—The relative purchasing power of farm products (when benefit payments are included) and of the farmers' "net" income, as well as the farmers' per capita share of the national income were about 80% of their pre-war level in 1934, though they differed widely in earlier years.

These trends, since 1900, are shown in figure 3. In a somewhat modified form, the relation between the income share and the population share is shown in figure 2 as derived from table 3. Here the farmers' share of the national income has been computed on a per capita basis instead of on the basis of gainfully occupied. The per capita farm income included in the national total was divided by the per capita income for the entire population and then expressed as percentages of the 1910–14 average. In 1909, the per capita income for the entire population of 90,000,000 was $294, and for the farm population of 32,000,000, $155 or 53 percent of the average for all.

THE FARMERS' SHARE OF THE NATIONAL INCOME AND PERCENT GAINFULLY OCCUPIED IN AGRICULTURE

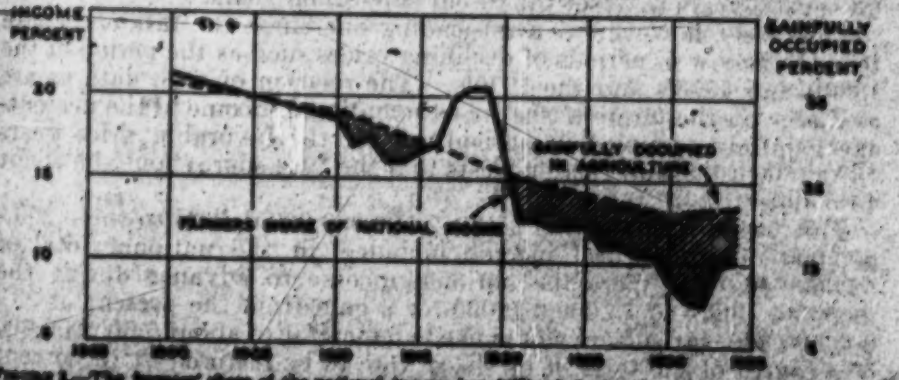

FIGURE 3.—The farmers' share of the national income has declined during the past century as the farm population and the number gainfully occupied in agriculture represent a smaller proportion of the total. After the war, the farmers' share of the national income fell to an abnormally low level and has been only partly restored by the 1933 and 1934 agricultural improvement.

In 1933 the average for the entire population of nearly 125,000,000 was $385 and for the 31,000,000 of farm population, $115, or 30 percent of the average for all. The per capita share of the farm

population rose to 123 and 134 percent of the pre-war share, declined to about 90 percent and by 1934 it advanced to 79 percent.

The share going to agriculture should have declined, in view of the decline in the proportion of our working population engaged in agriculture. But the post-war drop from the relatively high levels of 1917–19 apparently not only carried the farmers' share down too far, but set in motion a continuous decline at the subnormal level, checked only by the 1933–34 recovery. The relatively low post-war level will probably be found to be related to the increase in the proportion of the consumers' dollar going to distribution costs including labor, particularly in the case of livestock products, and to the decline in the foreign demand for our export crops.

What is a fair share of the national income for agriculture? In answering the question of a fair share for agriculture, we need to start with the facts as they have prevailed in the past decades and in the more recent years, but it should be borne in mind that this does not answer the question as to what should be the farmers shares; that involves consideration of what type of balance between agriculture and industry and the standards of rural and urban life that the country desires to promote.

Our records for the past 80 years or more show that agriculture tends to get a share of the total income which is approximately about 60 percent of the share of the total working population engaged in agriculture. A number of reasons may be given in explanation of this historic fact, such as nonmonetary forms of income enjoyed by farmers, a willingness to take a smaller return for a greater degree of individualism, and a greater degree of economic security in periods of general depression and a lack of effective bargaining power.

On the basis of the experience of post-war years, during which agriculture as a whole had failed to keep pace with general prosperity, the 1934 share instead of being 10 percent should perhaps be around 12 to 13 percent, or about 25 percent higher than at present, assuming that agriculture is not entitled to something more than average for several years to offset the recent subnormal years.

This basis, however, is a misleading one since the farmers' share tends to be low in periods of declining prices such as the period of the 1830's and 1890's and the 1930's. The relation of such data as are available on the farmers' share of the national income to the percentage gainfully occupied in agriculture for the favorable price years 1870, 1900, 1910, and 1920 suggests that the 1934 share should be about 15 percent.

This would mean adding about 2,500,000,000 dollars to the 5,200,000,000 of agricultural income included in the national total of 52,000,000,000. Were the national income to advance during the next few years to 75,000,000,000, or a gain from the present of 23,000,000,000, agriculture would need an increase of about 6,000,000,000 or a fourth of the total, if its share were to be restored to 15 percent instead of the present 10 percent.

THE THREE MEASURES OF THE AGRICULTURAL SITUATION COMPARED

The indexes of the purchasing power of farm products and of the farmers' net income, as well as of the farmers' per capita share of the national income (shown in fig. 2) each reveal the failure of agriculture to recover from the 1921 depression, before it was overwhelmed by the

depression after 1929. The exchange value of a unit of farm products on the whole varied less from 1910 to 1930 than did the other two indexes; it rose only about half as high as did the purchasing power of "net" income or the per capita share. It did not show the sharp decline in 1920 that appears in the other two indexes. In 1932 it reached 18 percent below the pre-war level, while the purchasing power of net farm income reached 35 percent below.

During the period 1923–29, the relative purchasing power of farm products averaged about 95 percent of pre-war, the purchasing power of net income about 93 percent, and the per capita share about 88 percent. As in 1920, the last two indexes also showed pronounced declines in 1930, compared with only a moderate decline in the index of purchasing power of farm products. By 1933, two of the measures averaged only 60 percent of pre-war, while the index of purchasing power of net income averaged 52 percent. By 1934, each showed advances to somewhat under 80 percent of the pre-war level.

On the mechanistic basis of action and reaction, the farm prosperity of the years 1915–19 was about offset by the subnormal conditions during the post-war years 1920–27. The subnormal conditions that have prevailed since 1927, and in intensified form since 1930, call for a period of several years of agricultural prosperity well above the pre-war levels.

To attain such conditions farmers must look forward to (1) balancing their production as between the several branches of agriculture so as to undo the damage done by the 1934 drought; (2) an increase in industrial production as a basis for increased city purchasing power and a larger exchange value of farm products for industrial products, the latter to be brought about either by a rising level of farm prices, or a declining level of industrial prices or a combination of the two; (3) reopening our foreign markets for wheat, cotton, and pork, and increasing foreign purchasing power for the other farm products we export; (4) lowering those costs of distribution which now take an inordinate share of the spread between farm and city retail prices.

Louis H. Bean,
Economic Adviser, Agricultural Adjustment Administration.

CORN BELT FARMING IN 1935

With the approach of spring, Corn Belt farmers are still struggling with the effects of last year's unexpected emergencies and wondering what 1935 has in store for them. The problems of 1934, including drought, insects, and price trends, may not take the same form in 1935, but farmers may be assured that 1935 will also bring its difficult situations. Some of these problems will be revealed only with the passing of time. Others can be dimly foreseen through the medium of past experience under similar conditions. Present circumstances dictate largely the range of expectations to be entertained in 1935.

The opportunity to increase corn acreage and feed crop acreage 25 percent or more above 1934 [illegible] makes possible a more efficient use of farm resources, including labor, machinery, and equipment. [illegible] to obtain a specified volume of production, a larger share of the crop are not increased by moving the actual output from 75 percent to 90

purchase of their volume. This advantage to farmers of a reduction of production comes for the most part from an increased sales price rather than from decreased costs of operation.

The effects of the 1934 drought will loom large at the beginning of the 1935 crop year. The shortage of feed in areas during the winter months. The coming of grass will help mightily, especially in the case of cattle. The growing of an increased acreage of small grains, accompanying the 10 percent corn acreage reduction from the 1932-34 base in corn contract farms, will be helpful in making more feed grain available early in the summer. This will be especially useful in providing feed for hogs and horses until the new corn crop matures.

The failure to obtain stands of grass from last year's seedings will make it necessary to use more land for emergency hay and pasture crops. Soybeans, oats, sudan grass, rape, and other emergency crops will be used extensively for these purposes. As was true in 1934, it is probable that more corn fodder than usual will also be fed in the winter of 1935-36 to meet the shortage of the better roughage still to be felt as a result of the drought of 1934. On account of the very small supply of grass seeds available for seeding in 1935, the full effects of this drought on the roughage situation will not be overcome until 1937 at the earliest.

Farmers in the Corn Belt in 1935 will be faced with widely varying relationships between feed and livestock prices. Feed scarcity in 1934 reduced the number of bushels of corn equal in value to 100 pounds of live hogs, at farm prices, to less than two-thirds of the long-time average relationship between corn and hog prices. Spring pigs farrowed in 1934 were 23 percent fewer than in 1933, but corn production was 41 percent less; hence, corn prices rose more than the price of hogs.

This situation is gradually changing. There were only slightly more than one-half as many fall pigs farrowed in 1934 as in 1933 and intentions of the 1935 spring pig crop suggest a 17 percent reduction from last year's short farrowings. Rising hog prices in the late winter have brought up the hog-corn price ratio almost to the long-time average. The expected further increase in hog prices in the late summer will probably cause the hog-corn price ratio, on a farm value basis, to exceed the normal figure of 11.5. With a yield per acre of corn in 1935 approaching the average of past years, it would appear that the increased corn supply and greatly reduced number of livestock would cause the hog-corn price pendulum to swing sharply in the direction of higher hog prices, as expressed in terms of corn prices. This tendency will be [illegible] somewhat if corn prices are stabilized by [illegible] have nearly adjusted to the need for corn by [illegible] in the following year.

[illegible] in the number of cattle in 1934 makes nearly [illegible] for several years. In the worst drought [illegible] the breeding herd has been maintained and it will be [illegible] foundation stock at relatively high [illegible] Some cattle must have necessarily [illegible] carry them through the winter. [illegible] and cheaper feed will still relief to many [illegible] to reduce his herd at low prices in the [illegible]

Some caution may need to be exercised by buyers of feeder cattle next fall if average yields of corn and other feed crops are restored, corn supplies and but few hogs to eat in the dry lot. Such buyers may easily drive the purchase price above that justified by the prospective demand for well-finished beef. It will be necessary to be more than usual for the cattle feeder currently to appraise the factors affecting the sales price of fat beef at the time his cattle will be ready for market rather than to be influenced too much by the price of well-finished cattle at the time he buys his feeders.

The production of dairy products in the Corn Belt was not reduced by the drought than was true of the gains on meat animals. The government buying program of 1934 was successful in weeding out the least desirable cows from the dairy herd; production per cow will probably be increased in 1935, especially if increased rainfall brings abundant pasturage for the smaller number on hand. Due to the general failure of clover stands, it will be more important for the dairyman than for the beef cattle grower to sow an emergency hay crop of good quality. It is fortunate that a large crop of soybeans is available for seeding in 1935 when the supply of most grass seeds has been so seriously reduced.

Chinch bug damage in the southern part of the Corn Belt in 1934 may be even more serious than in 1934 unless weather conditions are distinctly unfavorable to their increase. Knowledge gained last year by farmers who were experiencing them for the first time will be very valuable in combating them in the coming season.

For all classes of livestock the keynote of 1935 should be the maintenance and building up of breeding herds. Where there is a choice, the fattening of livestock should be limited rather than to sacrifice foundation stock. Where practically no feed is available, a high wintering outlay for purchased feeds may be justified by the high prices for livestock in the next 2 years.

George W. Conner,
Division of Farm Management and Costs.

THE GRAIN MARKET SITUATION

Domestic grain markets were unsettled in January, with price gains early in the month more than offset by declines later in the period. Diminishing supplies with light receipts were strengthening influences in wheat but these were largely offset by weakness in foreign markets where increased offerings of new Southern Hemisphere crops competed for the limited export trade. The seasonally light remaining stocks of feed grains maintained prices at relatively high levels and placed corn, oats and barley again on an import basis, with the result that domestic market conditions became increasingly important influences in the domestic situation.

[illegible] figures above January 1928. [illegible]

mill and elevator stocks or supplies in merchant mills, but trade estimates placed the quantity of wheat in these positions about 45,000,000 bushels under a year ago, which would suggest that total supplies of wheat in the United States are 125,000,000 to 150,000,000 bushels below those at this time last season.

Domestic utilization of wheat this season appears to be slightly above that of a year ago. Mills have ground more wheat and trade reports indicate increased feeding of wheat as a result of higher feed grain prices. Exports of wheat as grain have amounted to less than 3,000,000 bushels and have been more than offset by imports of Canadian wheat. Durum mills have been forced to turn to Canada for supplies of high protein durums. About 7,500,000 bushels of Canadian durum wheat had been imported to the close of December. More than 3,000,000 bushels of Canadian feed wheat had been brought in with the payment of the ad valorem duty of 10 percent. This feed wheat was being offered at Minneapolis, the middle of January, at around 90 cents per bushel delivered at that market.

With United States prices on an import basis, the world situation has become an increasingly important influence. World supplies of wheat are materially smaller than a year ago, reflecting principally the short 1934 crops in the United States and Europe. Despite the reduction of around 285,000,000 bushels in European crops, demand for wheat from exporting areas has remained dull and world shipments have fallen below those of last season, when they were the smallest since the war period. Southern Hemisphere countries competed actively with Canada for the limited export trade. Argentina shipped out more than 175,000,000 bushels during 1934, compared with about 245,000,000 bushels during the previous year. Australia, however, shipped out less than 100,000,000 bushels, compared with about 150,000,000 bushels during the previous season. Canadian exports, including shipments to the United States, totaled slightly less than 100,000,000 bushels during the 5 months ending with December, compared with about 104,000,000 bushels during the corresponding months of 1933. As a result of the smaller shipments, materially larger stocks of old crop grain remained in the Southern Hemisphere at the first of January than a year earlier, while Canadian stocks were only about 10,000,000 bushels below the relatively large supplies on hand a year ago.

New crop wheat from Australia and Argentina is now being offered freely and the efforts of Southern Hemisphere exporters to dispose of this grain has been a weakening influence in world markets. Southern Hemisphere supplies for the current season, however, from present indications, will be around 50,000,000 bushels smaller than last season.

[illegible] FEED GRAINS DECLINE DESPITE REDUCED SUPPLIES

Feed grains declined during January despite diminishing supplies and continued light marketings. Prices have reached relatively low levels compared with prices of livestock and dairy and poultry products, and this together with lack of funds, particularly in drought areas, has greatly restricted the movement of grain this season. Domestic markets are on an import basis and foreign grain has begun to appear in appreciable quantities.

Farm stocks of corn at the first of January were the smallest in the 9 years for which records are available, and totaled only about 814,000,000 bushels. Market stocks totaled 43,750,000 bushels, giving a total supply at the first of January of only 858,000,000 bushels, or about the quantity usually on hand at the first of April. Remaining stocks when compared with supplies at the beginning of the season suggest a domestic disappearance, from October through December, of less than 580,000,000 bushels. During the corresponding period last year, about 920,000,000 bushels passed into domestic consumption. Should domestic requirements during the remainder of the season show a corresponding decrease, the carry-over at the close of the period would not be unusually small. Sharp reductions in the number of livestock on farms and the substitution of cheaper forage for feed grains have been principally responsible for the reduced domestic utilization of corn this season. The official estimate of livestock numbers at the first of January is not yet available, but the combined spring and fall pig crop of 1934 was about 36 percent less than that of 1933 and totaled only about 53,000,000 head, compared with 82,000,000 head a year earlier. The decrease in the Corn Belt States was somewhat larger than for the country as a whole.

Market receipts of corn remained exceedingly small during January, but industrial and feeder demand was also limited and prices lost much of the early month gains. Market stocks were drawn upon rather heavily and were reduced about 5,000,000 bushels during the first 3 weeks of January. Only about 38,000,000 bushels were in store January 19, compared with nearly 69,000,000 bushels a year earlier. Some Argentine corn has been received on the Pacific coast and it is estimated that about 5,000,000 bushels of old Argentine corn and around 7,000,000 bushels of new crop grain has been purchased for shipment to the United States. Old Argentine corn for February shipment was quoted delivered United States ports around the middle of January at 91-92 cents, and new crop grain for May and June shipment at about 81 cents per bushel. These offerings have tended to check the advance in domestic prices.

Oats markets have fluctuated along with corn, but were slightly lower at the close of the third week in January than at the first of the month. Farm stocks of oats as the first of January totaled only 348,000,000 bushels and with commercial stocks gave a total supply of only 370,000,000, compared with about 504,000,000 bushels a year ago. Domestic utilization from January to the close of the season last year totaled approximately 260,000,000 bushels. Although demand for oats is apparently below that of a year ago, the relatively small oat crop suggest rather close adjustment of supplies to requirements this season. Domestic stocks, however, are being supplemented by importation of Argentine oats. More than 5,000,000 bushels of Argentine oats had arrived at American ports to the middle of January. These oats are now quoted at about 53 cents per bushel at seaboard markets, which is 10 to 11 cents below prices of domestic grain at the same markets. On January 22, No. 3 white oats were selling at the principal central-western markets at 55-60 cents per bushel.

Barley markets weakened slightly around the middle of January, influenced by lower corn prices and only moderate demand for current offerings. Choice malting barley continued in good demand,

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With United States prices on an import basis, the world situation has become an increasingly important influence. World supplies of wheat are materially smaller than a year ago, reflecting principally the short 1934 crops in the United States and Europe. Despite the reduction of around 235,000,000 bushels in European crops, demand for wheat from exporting areas has remained dull and world shipments have fallen below those of last season, when they were the smallest since the war period. Southern Hemisphere countries competed actively with Canada for the limited export trade. Argentina shipped out more than 175,000,000 bushels during 1934, compared with about 145,000,000 bushels during the previous year. Australia, however, shipped out less than 100,000,000 bushels, compared with about 150,000,000 bushels during the previous season. Canadian exports, including shipments to the United States, totaled slightly less than 100,000,000 bushels during the 5 months ending with December, compared with about 104,000,000 bushels during the corresponding months of 1933. As a result of the smaller shipments, materially larger stocks of old crop grain remained in the Southern Hemisphere at the first of January than a year earlier, while Canadian stocks were only about 10,000,000 bushels below the relatively large supplies on hand a year ago.

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FEED GRAINS DECLINE DESPITE DIMINISHING SUPPLIES

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THE DAIRY MARKET SITUATION

The butter situation is a principal point of interest this month. Except for two temporary set-backs, one in December and another in mid-January, the upward swing of butter prices which began in October has continued. Current domestic prices have already attracted some imports, principally New Zealand butter, and negotiations for further imports are pending, these imports being possible because prices in foreign markets are lower than domestic prices by more than the 14-cent tariff. High domestic prices are a reflection of relatively light production and a comparative shortage of supplies in storage, but just how high these prices may go will depend upon consumption and the extent to which foreign shipments are received.

Butter production in December was approximately 12 percent below December 1933, and the change from November was a reduction of 7 percent, rather than the usual seasonal increase of 4.5 percent. This marked drop can be attributed to the extreme shortage of hay and grain supplies which is becoming more acute as the feeding season advances. December is the first month this season during which production was curtailed so sharply as many had anticipated would occur after the drought. The December change suggests the reason why production was fairly well maintained during pervious months, namely, that farmers were probably drawing heavily upon such feed supplies as were available. There is a feeling that production will continue low during the balance of the current feeding season.

The report on estimated butter production in December shows that there were exceptionally sharp reductions under 1933 in Minnesota, Wisconsin, and Iowa. In a few scattered States there were increases. This group includes Illinois, Missouri, Oklahoma, Colorado, and Oregon. There was also a heavier production in Pennsylvania, but in New York there was a 75 percent drop. The net decrease in total United States output for the month was 13,500,000 pounds, and the estimate of 102,702,000 pounds produced was the lowest December production since 1929. Estimated total production for 1934 is 1,653,702,000 pounds, a decrease of 108,000,000 pounds, or 6.2 percent under 1933. Cheese production in December was 2,500,000 pounds, or 7.5 percent less than in 1933, although for the full year there was a 3 percent increase, amounting to 16,000,000 pounds. The only manufactured dairy product registering a gain in December over a year earlier was evaporated milk, which increased 10.6 percent, bringing the 1933 total just slightly above 1932.

On a milk-equivalent basis the combined December production of butter, cheese, and condensed and evaporated milk was 10 percent below December 1933 and total 1934 production was 4.5 percent less than the previous year.

The first signs of a falling off of consumption appeared in December. Taking into account the month's production, changes in storage stocks between December 1 and January 1 and such imports and exports as occurred, butter showed a reduction under December 1933, of 4.4 percent, cheese 6.3 percent, and condensed milk 9.3 percent. Evaporated milk increased 44 percent, although this figure does not necessarily represent the actual consumption change, since it is possible to measure changes in stocks only with respect to manufacturers. The increase in evaporated milk prices through an amendment to the marketing agreement which was approved

and became effective January 11, was anticipated in December, and it is quite possible that the increased trade output of evaporated milk was partly due to the replenishing of stocks by distributors before the price advance became effective.

Stocks of all classes of dairy products, except cheese, are far below those of a year ago. On January 1, the quantity of butter in storage was only 47,093,000 pounds, compared with 111,249,000 pounds last year on the same date, and a 5-year average of 61,054,000 pounds. Manufacturers' stocks of evaporated milk on January 1 totaled 155,166,000 pounds, whereas on January 1, 1934 a total of 210,407,000 pounds was reported. Stocks of American cheese, however, continued very heavy, amounting on January 1 to 89,846,000 pounds, an increase of 12,000,000 pounds over last year, and 23,000,000 pounds more than the January 1 5-year average.

The present wholesale price of 92-score butter at New York is 35½ cents (January 25), which is the highest point reached at any time since October 1931. In London, Danish butter is quoted at 23.3 cents, and New Zealand butter at around 18½ cents. With a difference of 17 cents per pound between New York and London, there is margin enough over the 14-cent tariff to attract imports. So far imports have been mostly New Zealand butter shipped London, although this week some 500 boxes were received at New York direct from New Zealand. The total arrivals of New Zealand butter approximate 2,600 boxes (145,600 pounds), and in addition approximately 350 casks of Danish butter (38,800 pounds) have arrived. Other shipments of New Zealand butter are reported due for arrival next week, and a further report is that a much larger shipment than has heretofore been received is scheduled to arrive the first week in March. Advances in wholesale prices have been followed by higher retail prices. In some of the large eastern cities, prices to consumers were raised 4 cents per pound during the week of January 21–26. Retail prices in New York City are now 41–43 cents per pound. Higher retail prices are said to have caused some shifting from the use of butter, although the extent to which this may have occurred is not known at the moment. This week's advance of cheese prices in Wisconsin makes primary market quotations the highest they have been since November 1930.

No butter purchases have been made by the Government recently. The last Government purchases were evaporated and dry milk. Evaporated milk purchased amounts to 37,619,000 pounds (864,800 cases), and deliveries are already being made on these contracts at quite a number of widely scattered points. Awards for dry milk cover 3,081,250 pounds, and deliveries will start shortly. Another point of interest in connection with Government activities is that several amendments have been approved to licenses in effect in fluid milk markets, whereby class I prices are advanced. The most important market thus affected is Chicago, where an increase of 20 cents per hundredweight became effective January 17.

L. M. Davis,
Division of Dairy and Poultry Products.

SUMMARY OF DAIRY STATISTICS

[Millions of pounds, milk equivalent]

PRODUCTION

Product	December			January to December, inclusive		
	1934	1933	Per cent change	1934	1933	Per cent change
Creamery butter	103	116	−11.8	1,654	1,763	−6.2
Cheese	31	34	−7.7	560	544	+2.9
Condensed milk	14	16	−12.5	223	211	+5.8
Evaporated milk [1]	94	85	+10.6	1,721	1,717	+0.2
Total milk equivalent	2,705	2,902	−2.9	44,602	46,695	−4.5

APPARENT CONSUMPTION

[Including production, changes in stocks and net imports or exports]

Creamery butter	127	143	−4.4	1,718	1,673	+2.7
Cheese	42	45	−6.3	596	563	+4.9
Condensed milk	16	17	−9.3	216	208	+3.7
Evaporated milk [1]	139	97	+43.9	1,738	1,574	+10.4
Total milk equivalent	3,637	3,708	−1.9	46,329	44,737	+3.6

[1] Case goods only.

THE EGG AND POULTRY MARKET SITUATION

The egg markets at the beginning of 1935 appear to be in a much stronger position statistically than a year earlier, and as a consequence have shown more than the usual amount of resistance to the normal January decline in price. Stocks of eggs in cold storage on January 1, this year, were about 11 percent smaller than on January 1, last year, and 35 percent smaller than the 5-year average. Receipts of eggs at the leading terminal markets, with the notable exception of New York, during the first 3 weeks of January did not equal those of the corresponding 3 weeks of last year by about 28 percent. At New York, however, receipts for this period were slightly larger than a year earlier. This latter situation is the result of relatively small stocks of eggs stored last spring at that point, so that within recent months considerable quantities of storage eggs have been shipped in from interior centers of storage to supplement stocks withdrawn from local storage warehouses.

The price trend of eggs in January is normally downward, although it is usually interrupted by temporary advances brought about by a shortage in the immediate available supplies. Usually by late January the reserves of storage eggs are exhausted, and with the trade once again on a fresh-egg basis, and the new into-storage season 6 to 7 weeks away, prices are quite easily influenced by the size of each day's receipts. At this time of the year, dealers prefer to work on a day-to-day basis. Any evidence of accumulation in supplies brings about an immediate decline in prices, while any shortage in supplies results in an advance in quotations.

So far this month prices have [illegible]
and seasonal decline. In fact [illegible]
they began to the earlier decline [illegible]
the demand, and supplies of [illegible]
movements over a large part of the [illegible]
ration of light collections from [illegible]
January 25, the best grades of [illegible]
Yolk are bringing 25 cents a dozen, [illegible]
quotations on the same date last year. [illegible]
cents. White Eggs are about 11 cents higher and
White Eggs, 9 cents. Very few storage eggs are [illegible]
for that are offered are quoted at an increase of 6 cents [illegible]

Production conditions in the general farm belt of the [illegible]
which supplies a large volume of eggs for the [illegible]
western markets, have not been very favorable [illegible]
drought last summer, and have become very low as [illegible]
A great many farm flocks were sacrificed last fall because of the high cost of
feed to carry them through the winter, and the production of those
remaining has been held down by inadequate feeding for a normal laying.
Layings per farm flock in that area on January 1, amounted to 15.6
eggs compared with 19.2 eggs on the same date last year, according to
the United States Crop Reporting Board. The average production
for the entire country on January 1 was 13.4 eggs per farm flock com-
pared with 16.0 eggs a year earlier. Production in the commercial egg
producing areas of the Atlantic seaboard and the Pacific coast appears
to be holding close to last year's levels, but the relative shortage produced
in these sections, while large, will not make up for the smaller production
in other areas. The number of hens and pullets of laying age in
farm flocks on January 1, this year, averaged 72.4 per farm compared
with 85.2 on January 1, last year, and 82.8 per farm for the 5 years of
1928-32. The general forecast for a smaller spring production this
year than last seems likely to be realized.

Shell eggs in storage on January 1, 1935, amounted to 647,000
cases compared with 731,000 cases on January 1 last year, and 909,000
cases for the 5-year average. Since January 1, practically all of the
shell eggs in storage on that date have been moved into consuming
channels. Frozen eggs in storage on January 1 amounted to 54,333,-
000 pounds compared with 61,419,000 pounds a year earlier and
66,567,000 pounds for the 5-year average. The small stocks of shell
eggs in storage on January 1, together with the light January fresh
egg production, will likely result in a sizeable reduction in frozen egg
stocks by February 1.

Developments of the last month give promise to some improvement
in the relation of egg prices to feed costs during the course of the
first 6 months of 1935. The prices of the expected smaller produc-
tion will likely be supported by a fairly good demand for storage
purposes, by an increased use by commercial bakeries, and by a
demand from breakers fully as strong as that of a year ago. With
the coming of spring and the grazing season, the number of hens
will prove of less importance to the average farmer whose flocks
obtain a part of their feed from the open range, although still an
important factor to the commercial producer who has to buy all
his feed.

The poultry markets in January for the most part held full steady to firm. The only class to display any weakness at all was live broilers. These were in generally heavy supply at most eastern markets, and quotations worked about 2 cents lower. The market on live fowl was slightly uneven, liberal receipts the first part of the month causing a 1- to 2-cent loss on heavy grades, but all this being regained toward the close as advancing egg prices caused a slowing up of farm marketings of old hens.

Receipts of dressed poultry at the 4 principal markets during the first 2 weeks of January were about 20 percent smaller than for the same period last year. As a consequence, stocks of dressed poultry in cold storage at these points decreased about 3,500,000 pounds compared with a decrease of only about 300,000 pounds a year ago. Prices of all classes of both fresh and frozen poultry held steady to firm, with quotations on fowl advancing 3 cents.

It now appears that the 131,752,000 pounds of dressed poultry reported in cold storage on January 1, 1935, will represent the peak for the into-storage season just ending. Usually the peak is reached on February 1. Although the stocks reported for January 1 were in excess of the 123,503,000 pounds on January 1, last year, and also the 119,495,000 pounds for the 5-year average, it is the consensus of opinion that due to the shortage of poultry now on farms these stocks will move into consumption without difficulty, and at considerably higher prices than received last year. The price of frozen broilers, however, may be affected to some extent during the first one or two months by the rather heavy supplies of live broilers which are expected. Commercial hatchings on the Atlantic seaboard of baby chicks for winter broilers were especially heavy, during October, November, and December, and receipts of broilers so far this year have been in excess of those of a year ago, and prices have ranged 2 to 3 cents lower. Stocks of frozen broilers in storage on January 1 were slightly over 2,000,000 pounds larger than a year earlier, but such stocks are generally being held rather closely in the belief that the supplies of live broilers may not be so liberal later in the season and that there will then be an opportunity to market frozen broilers at a more satisfactory level.

B. H. BENNETT,
Division of Dairy and Poultry Products.

BENEFIT, RENTAL, AND DROUGHT-RELIEF PAYMENTS TO FARMERS NOT INCLUDED IN OTHER SOURCES OF INCOME

	Cotton	Tobacco	Wheat	Hogs [1]	Corn-hog	Cattle [2]	Total [3]
	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars	Million dollars
1933							
October	51	1		4			56
November	8		2	1			12
December	8		16				24
1934							
January	22		27				49
February	14		14				28
March	3		6				9
April	1	4	2				7
May	9	4	1		2		16
June	19	3	1		5	1	29
July	8	1	1		10	11	31
August	6	2	1		33	26	73
September	2		2		47	25	76
October	12		26		23	29	90
November	24	2	25		4	9	65
December	13	1	13		23	4	54

[1] Revised. For pigs purchased under emergency hog-reduction program.
[2] Purchased under drought-relief program.
[3] Total of all benefit, rental, and drought-relief payments made during month may not check exactly with sum of payments on individual programs.
[4] Includes sheep and goats purchased under drought relief program.

PRICES OF FARM PRODUCTS

Estimates of average prices received by producers at local farm markets based on reports to the division of crop and livestock estimates of this Bureau. Average of reports covering the United States weighted according to relative importance of district and State.

Product	5-year average, August 1909–July 1914	January average, 1910–14	January 1933	December 1934	January 1935	Parity price, January 1935
Cotton, per pound	cents	12.4	12.7	5.6	12.4	12.3	15.6
Corn, per bushel	do	64.2	58.6	19.1	64.8	65.2	69.6
Wheat, per bushel	do	88.4	88.4	33.6	96.6	99.2	111.4
Hay, per ton	dollars	11.87	11.87	6.68	13.26	14.09	14.98
Potatoes, per bushel	cents	69.7	64.2	37.4	43.4	45.1	67.2
Oats, per bushel	do	39.9	38.6	18.4	33.9	34.6	38.9
Beef cattle, per 100 pounds	dollars	6.21	6.04	3.88	2.98	4.05	4.88
Hogs, per 100 pounds	do	7.23	7.03	3.88	5.15	6.37	8.76
Chickens, per pound	cents	11.4	10.8	9.3	11.7	12.3	14.4
Eggs, per dozen	do	21.5	23.0	21.4	27.9	26.0	32.9
Butter, per pound	do	26.6	27.6	20.6	26.3	27.4	32.1
Butterfat, per pound	do	28.3	29.3	19.9	23.3	24.5	33.1
Wool, per pound	do	17.9	18.4	8.6	14.8	16.6	20.3
Veal calves, per 100 pounds	dollars	6.75	6.33	4.12	4.98	5.64	8.09
Lambs, per 100 pounds	do	6.97	6.79	4.99	5.61	5.82	7.78
Horses, each	do	142.90	138.60	62.60	101.60	97.60	178.60

[1] Adjusted for seasonality.

	88		99	101	100	73	
	106	179	117	114	116		
	104	177			116	86	
	104	176			116		
	103	176	117	114	116		
1964							
	105	179			117	81	
	107	179			119		
	106	184	121	119	120		
	107	183			120	88	
	108	183			121		
	109	182	123	121	121		
	109	181			122	90	
	112	186			125		
	113	182	123	129	126		
	113	181			126	93	
	113	186			126		
	112	185			126		

1930	104	113	101		103	93	104	102	96	102
1931	86	101	102		87	96	91	96	103	93
1932	103	87	94		86	103	100	100	100	100
1933	92	97	107		103	105	101	101	101	100
1934	102	88	91		113	104	106	101	106	101
1935	120	77	82		104	103	101	96	103	93
1936	126	119	100		130	103	116	113	124	95
1937	217	187	118		174	135	155	175	146	117
1938	227	245	172		206	163	186	202	170	115
1939	233	247	178		207	186	200	215	202	105
1940	232	248	191		174	198	228	211	201	103
1941	112	101	152		109	139	162	125	152	82
1942	106	156	174		114	145	141	152	149	89
1943	113	116	137		107	139	146	142	132	93
1944	126	212	125	150	110	149	148	142	153	94
1945	157	177	172	158	146	162	163	156	157	99
1946	131	122	136	142	147	152	160	148	158	94
1947	138	128	144	121	140	155	144	139	146	91
1948	130	152	176	150	151	158	153	149	155	98
1949	126	144	141	149	156	157	162	146	153	95
1950	100	102	102	140	133	137	126	126	145	87
1951	63	82	96	117	93	108	100	87	124	70
1952	44	47	82	102	62	83	92	66	107	61
1953	62	64	74	105	80	82	78	70	106	64
1954	92	92	100	104	96	96	89	90		
1953										
January	35	45	70	91	51	81	95	80	102	58
February	34	44	64	96	59	74	60	56	101	54
March	36	49	85	92	58	71	59	55	100	55
1954										
January	76	82	86	102	83	84	82	77	117	66
February	79	93	87	101	65	92	75	83	119	70
March	79	94	97	79	86	95	74	84	120	70
April	77	94	96	98	84	91	72	82	120	66
May	78	90	110	89	64	91	72	83	121	66
June	80	94	137	80	64	93	72	86	121	71
July	91	99	113	102	66	94	76	87	122	71
August	106	107	101	105	66	97	86	96	126	77
September	112	110	93	133	82	99	104	103	130	82
October	109	107	96	110	74	100	108	102	126	81
November	109	107	96	107	72	103	128	101	126	80
December	116	109	88	130	78	107	119	101	124	80
1955										
January	115	108	87	117	66	113	114	107	126	84

THE TREND OF EXPORT MOVEMENT

Compiled from the Department of Commerce reports by the foreign agricultural service division of this Bureau.

Year and month	Wheat,[1] including flour	Tobacco (leaf)	Bacon, hams, and shoulders	Lard[1]	Apples (fresh)	Cotton, running bales
	1,000 bushels	*1,000 pounds*	*1,000 pounds*	*1,000 pounds*	*1,000 bushels*	*1,000 bales*
Total:						
1920	311,601	467,662	821,922	612,250	5,393	6,[illegible]
1921	359,021	515,358	647,680	368,942	5,809	8,[illegible]
1922	235,307	420,908	831,452	766,950	4,945	6,[illegible]
1923	175,190	474,500	828,890	1,035,382	8,876	5,[illegible]
1924	241,454	546,555	637,980	944,095	10,261	6,[illegible]
1925	138,784	488,471	467,459	688,829	10,043	8,[illegible]
1926	193,971	478,773	351,591	696,961	16,170	8,[illegible]
1927	228,576	506,252	297,720	681,303	15,584	9,[illegible]
1928	151,976	575,466	242,278	759,722	13,635	8,[illegible]
1929	154,348	555,347	275,118	820,328	16,856	7,[illegible]
1930	149,154	560,958	216,958	642,486	15,850	6,[illegible]
1931	125,686	503,531	122,246	568,708	17,785	6,[illegible]
1932	82,118	387,768	84,175	546,184	16,919	8,[illegible]
1933	28,611	420,418	100,180	579,132	11,029	8,[illegible]
1934	.....	418,983	88,725	431,238	.....	5,[illegible]
December:						
1920	30,877	45,391	83,276	90,080	1,509	
1921	15,217	38,772	36,848	64,542	569	
1922	16,728	36,954	65,642	78,596	859	
1923	13,358	49,269	76,263	98,578	962	
1924	24,616	44,384	33,788	76,803	1,073	1,[illegible]
1925	8,437	68,378	40,277	65,840	2,257	[illegible]
1926	15,301	50,379	23,508	62,680	2,479	1,[illegible]
1927	12,197	47,661	19,839	62,855	1,351	[illegible]
1928	12,053	67,587	18,886	80,358	1,993	1,[illegible]
1929	12,428	65,980	17,404	80,053	1,566	[illegible]
1930	6,903	58,435	10,466	45,114	3,384	[illegible]
1931	12,100	54,413	6,206	65,598	1,522	1,[illegible]
1932	3,549	28,910	6,347	49,919	1,144	1,[illegible]
1933	5,975	60,783	6,561	54,838	1,895	[illegible]
1934:						
January	5,548	25,783	4,965	51,202	2,556	[illegible]
February	4,039	27,571	7,012	36,908	2,166	[illegible]
March	4,732	45,024	7,206	39,493	1,029	[illegible]
April	5,432	39,857	5,280	39,350	357	[illegible]
May	2,725	30,512	7,702	66,167	35	[illegible]
June	1,418	27,799	8,137	41,008	9	[illegible]
July	2,168	17,626	11,572	33,466	127	[illegible]
August	3,818	23,630	8,769	29,358	201	[illegible]
September	2,190	30,620	4,902	31,506	343	[illegible]
October	1,966	61,606	5,235	26,870	634	[illegible]
November	1,986	45,284	7,589	19,732	984	[illegible]
December	.....	25,592	4,259	16,170	.....	[illegible]

[1] [illegible] [illegible] [illegible] [illegible]

CIRCULAR No. 338 DECEMBER 1934
UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C.

THE FARM REAL ESTATE SITUATION, 1932-33

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THE SITUATION IN GENERAL

Rapidly moving events in the farm real estate situation during the year 1932–33[1] brought further recessions in farm real estate values, greater frequency of distress sales of all kinds, a slight increase in the frequency of voluntary sales, an increase in the number of farmer bankruptcies, the highest farm population in history, further contraction of the flow of new mortgage credit, further development of cooperative adjustment plans between debtors and creditors, and a wide variety of relief legislation.

During the year 1932 prices of most of the important farm products reached the lowest points recorded during the depression. As measured by the Bureau indexes, cotton prices in June 1932 were only 37 percent of pre-war prices (August 1909–July 1914=100); grain prices in December 1932 averaged only 33 percent of pre-war prices; meat animals in the same month averaged 52 percent; fruits and vegetables in November 1932 and February 1933 averaged 57 percent; dairy products in March and April 1933 averaged 59 percent; and poultry products in March 1933 averaged 54 percent. Prices paid by farmers declined, also, but not in proportion to the prices of farm products. Declining from 152 in 1929, prices paid

[1] The real estate year ordinarily covers roughly a 12-month period ending about Mar. 1. Possession of farms by lease or sale is commonly given at that time, and occupancy usually is considered as beginning on that date. Unless otherwise stated, therefore, the term "1932–33" denotes the 12-month period ended on or about Mar. 1, 1933. Most of the real estate data here used pertain to that period. Other data are available for the calendar year only. The term "1932" denotes the calendar year ended Dec. 31, 1932.

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for commodities used by farmers averaged 107 percent of the pre-war level (1910–14=100) for the year 1932, and reached 100 percent in March 1933. For 1931 the index was 124, and in 1930 it was 144 percent of the pre-war base. Accordingly, the ratio of prices received by farmers to prices paid declined further, and in June 1932 reached 48 percent.

Gross income from farm production during 1932, estimated by the Bureau at $5,143,000,000, reached the lowest level in the available statistical record. This was a billion dollars less than in 1909; less than half the 1924–29 average, and 26 percent below that of 1931. Operating expenditures other than labor declined to $1,351,000,000, in comparison with $1,921,000,000 for 1931, and with $2,824,000,000 in 1930; and cash wages to hired labor amounted to $380,000,000 as compared with $587,000,000 and $809,000,000 in 1931 and 1930 respectively. Some reduction in taxes and interest also occurred, but not in proportion to the reduction in gross income.

In accomplishing these reductions in expenditures, farmers have curtailed their purchases sharply, particularly their capital expenditures. The Bureau estimates indicate that farmer's capital expenditures amounted to about $218,000,000 in 1932, which is about one quarter of the 1924–29 average.

It was inevitable that farm real estate values should decline further. During the year 1931–32 the index [2] of estimated value per acre of farm real estate [3] for the United States as a whole, based on reports from crop correspondents [4] to the Bureau of Agricultural Economics, declined 16 points, from 89 to 73. (One point on the index equals 1 percent of the average value per acre for the 3 pre-war years, 1912, 1913, and 1914.) The United States average value per acre of farm land and buildings, as measured by the Bureau index, is lower than at any other time in the available record, which began in 1912.

During the decade 1920 to 1930, the index for the country as a whole dropped from 170 to 115, or 32 percent from the peak. Most of the decline occured in the early years of the decade, values having leveled off considerably in the latter part. During the 3 years, 1930 to 1933, the index dropped from 115 to 73, a decline of 37 percent. On an average, United States farm real estate values as of March 1, 1933, were approximately one quarter below the pre-war base and somewhat more than one half below 1920 values.

Calculated as a percentage of values in the preceding year, rather than as a percentage of the pre-war base, the average decline in values during the year was approximately 18 percent, in comparison with 16 percent in 1931–32, 8 percent in 1930–31 and 1920–21, and 11 percent in 1921–22. In all but 7 States the index of values in March

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[2] Preliminary State estimates of changes in values are published annually in the May issue of Crops and Markets.

[3] The term "real estate" as used throughout this circular includes the land and buildings and other permanent improvements.

[4] In view of the small number of bona-fide sales occurring in many sections of the country during recent years, a possible bias toward holding prices may exist in the estimates of value obtained in this survey. Correspondents continue frequently to mention that voluntary sales are too few to establish much of a price base. Even though the estimates may thus require confirmation by subsequent actual voluntary sales, their trend should be significant. Estimates would seem to be prerequisite to the bids and offers out of which sale prices are made.

1933 was below the pre-war base, 4 of the 7 States having been in New England.

Although farm real estate values have declined seriously during the last 2 years, averaging 31 percent for the whole United States, it is worth while to recall that they have not been singular in this regard. Well-recognized indexes of stock prices have shown greater declines in the last 2 years than have farm real estate values. Even some bond indexes have declined as much or more. For example (*16*)[1] 351 industrial stocks declined 63 percent from March 1931 to March 1933; 37 public-utility stocks dropped 65 percent in the same period; and 33 railroad stocks declined 74 percent. A well-known index of industrial bonds was 44 percent lower in March 1933 than 2 years earlier, an index of high-grade railroad bonds was 20 percent lower, and an index of public-utility bonds was 18 percent lower. Although there are several important differences between these securities and farm real estate, it is evident that the general order of the declines in farm real estate values has not been greater than in the case of a substantial amount of other investments.

Land turnover, or changes in farm ownership for the country as a whole, showed a pronounced increase during 1932–33 in the volume of all forced sales and related losses of title through financial default (table 12). The weighted average rate for all classes of such transactions for the country as a whole was 54.1 per 1,000 (that is, on an average, out of each 1,000 farms, 54.1 farms went through foreclosure, tax sale, sale in bankruptcy, or other such loss of title). This rate represented an increase from the 41.7 reported for 1931–32, and is the highest point in the Bureau's record, which began with the 12-month period ended March 15, 1926. The corresponding national average for 1930–31 was 26.1 farms per 1,000; for 1929–30, 20.8; and for 1928–29, 19.5.

Excluding the tax-sale classification, the frequency of involuntary transfer (principally deeding back and mortgage foreclosures) increased during 1932–33 to 38.8 farms per 1,000 from the 28.4 indicated for the previous year. Plantations and ranches are considered as farms in these computations. In neither tax sales nor other types of forced sales are all the transfers of ownership indicated by these figures necessarily irrevocable. The laws governing such procedures in the various States customarily provide a period of redemption, during which, under certain conditions, the former owner may redeem his property. Moreover, there have been changes in the laws of various States in respect to these matters during the year, and the effects of these changes cannot yet be fully appraised. In many cases of mortgage foreclosure the former owner probably remains on the farm as a renter or may enter into an agreement for the repurchase of the place. In certain cases of tax sales, also, the former owners apparently have been allowed to remain.

Voluntary sales have been reported as somewhat more frequent in a number of regions. (See table 12.) The average rate for the United States was 16.8 farms per 1,000 for the year ended March 15, 1933, as compared with 16.2 for the previous year. Owner-operators who have not been pressed to sell are not generally disposed to offer

[1] Italic figures in parentheses refer to Literature Cited, p. 66.

their farms at present prices. Loan agencies are selling farms acquired through foreclosure as occasion offers, some of them having increased their sales in 1932 markedly over those of the preceding year.

In nearly all States the relative declines in values from a year ago were large. In the East North Central States real estate values averaged 15 percent below those of a year ago, and in the West North Central States, 21 percent below. The relative decline within the regions, however, varied from 12 percent in Indiana and Wisconsin to 18 percent in Illinois and from 10 percent in North Dakota to 27.5 percent in Iowa.

On the whole the frequency of voluntary sales in both these regions declined slightly during the year, but in Minnesota, Missouri, and South Dakota slight increases were reported. Forced sales as a result of delinquency on debt service increased in each of these States, whereas sales as a result of tax delinquency increased in some and decreased in others.

The Southern States, too, reported large mark-downs in values during the year, but, of course, there was variation from State to State. Values in West Virginia, for example, were 9 percent lower than those of the previous year, whereas those in North Carolina were 25 percent lower. In the East South Central States declines ranged from 14 percent in Alabama to 21 percent in Mississippi, and in the West South Central States they ranged from 14 percent in Louisiana and Texas to 23 percent in Arkansas.

Voluntary sales were reported as having been more frequent in a majority of the Southern States, and the average for each of these three geographic divisions was a little higher than the previous year. Forced sales as a result of debt delinquency were higher than during the previous year in every Southern State except Maryland and Virginia, and tax sales were more frequent in each State except Maryland, South Carolina, Kentucky, Arkansas, and Texas.

Values in the Western States continued to decline. For California and Oregon the Bureau index was 18 percent lower than last year, and in Washington it was 19 percent lower. Declines in the Mountain States varied from 13 percent in Arizona to 21 percent in Idaho.

Some of the Western States reported increased voluntary sale rates, others reported decreased activity, and the same is true of both tax sales and other forced sales.

Values in all the New England and Middle Atlantic States averaged lower than for the previous year, although in general the declines were less severe than in the remainder of the United States. The greatest relative declines in these regions were in Maine and Pennsylvania. On the whole, voluntary sales increased slightly in the Middle Atlantic States and decreased slightly in New England. Tax sales and other forced sales increased somewhat in both regions.

The latest available data concerning the number of farmers discharged in bankruptcy proceedings show increases for the year ended June 30, 1932, when 4,849 cases were concluded, as compared with 4,023 for the previous year. Prior to the year ended June 30, 1932, the trend in farmer bankruptcies has been downward since 1925. Increases in the number of farmer bankruptcies were reported in 31 States, decreases in 16, and 1 State reported no change. The

proportion of all bankruptcies represented by farmers increased to 7.7 percent from the 6.7 percent for the year ended June 30, 1931.

Farm population reached the all-time peak of 32,242,000 on January 1, 1933, according to estimates of the Bureau of Agricultural Economics. This is a striking increase from the 30,169,000 on January 1, 1930, which was the smallest number of persons on farms for at least the two preceding decades. The increase during the 3 years has been largely due, aside from the natural increase, to the smaller number of persons leaving farms for urban centers. The number of persons moving from city to country during 1932 was smaller than in 1931.

The shift in population has been reflected to some extent in an increased demand for farms to rent, in the purchase of farms, in "doubling up" in homes of farm families, and in the occupation of a large number of formerly abandoned homesteads, shacks, and buildings that would provide shelter. The movement has resulted in an increase in the number of persons directly dependent upon some type of agriculture, without a proportionate accompanying flow of capital. The effect of the movement upon farm real estate values has consequently been very meager, on the whole, and insofar as it has been effective, has cushioned the decline, rather than brought about an increase in values. The earning prospect of farm real estate continues to be the principal determinant of values.

The credit side of the farm real estate situation has been characterized by continued difficulties in repayment of credits previously obtained, and by the smallest volume of new credit extended in many years. Maturing loans have met with pressure for reduction as a condition of renewal, and both new and renewed loan contracts to an increasing extent have carried provision for payments on principal during the life of the loan.

It has not been possible, however, to reduce debts as rapidly as real estate values have declined, and consequently there has been an increase in the proportion of mortgaged farms having high ratios of debt in relation to the new values. There have consequently resulted an increased number of forced sales, as noted earlier, despite the further developed tendency among creditors toward postponement of payments and of leniency toward borrowers who were making sincere efforts to meet the requirements of creditors.

The distressed conditions in agriculture deriving from the low level of income, and especially from the increasing number of foreclosures and tax sales were, of course, largely responsible for the demand for various types of relief.

Several States modified their laws or regulations respecting collection of real estate taxes. Extension of penalty date, legalization of paying taxes in installments, extension of the redemption period, and modification of penalties are among the changes adopted. Concerted efforts looking toward tax reduction have been continued.

Increasing tension as a result of mortgage foreclosures brought about gubernatorial declarations of moratoria on foreclosures in some States. The legislative response to appeals for relief has varied from State to State, but among the proposals receiving legislative approval have been the extension of the redemption period, the ban-

ning of deficiency judgments, and the mandatory continuing of foreclosure actions. Some of the measures enacted have since been declared unconstitutional, and the constitutionality of some others may be questioned before the adjustment period is completed.

Federal interest in the situation has been evinced through the subscription by the United States Government of additional funds to the Federal land banks; by further extension of Federal credit to agriculture; through the enactment of legislation facilitating the composition of creditors' claims and the devising of compromises between debtors and creditors; and since March, through the undertaking of extensive plans to raise agricultural prices, to restore business activity generally, and through the reorganization of Federal credit activities as they relate to agriculture.

The year 1932–33 has been one in which much attention has been directed to the problem of arriving at a workable relation between debts and income. The impossibility of paying debts contracted at a higher price level with income at a much lower level, together with the necessity of cooperation between all parties has been more generally recognized, but the final working out of the situation will take time, and the policies facilitating eventual adjustment will of course be modified in the light of experience and subsequent economic developments.

FARM REAL ESTATE VALUES

VALUES DECLINED FURTHER, REFLECTING LOWER INCOMES

The year ended March 1, 1933, witnessed the decline of farm real estate values for the country as a whole to a level 27 percent below that of the pre-war period, 1912–14. The Bureau's index of estimated value per acre of farm real estate as of March 1, 1933, was 73 percent of the pre-war base (table 1 and fig. 1). During the 12 months, values declined 18 percent from their position at the beginning of the year. In only 2 recent years have such wide-spread and drastic declines occurred—during the year ended March 1, 1922, when the Bureau index declined 11 percent from 157, and during the year ended March 1, 1932, when it declined 16 percent from 106. As measured by the Bureau index the relative decline in farm real estate values from 1930–33 was greater than during the whole decade, 1920–30, the relative decline during the 10-year period having been 32 percent, and during the last 3 years 37 percent. When it is considered that values of 1920 had been reached as the climax of a land boom, the devastating effects of the last few years are strikingly apparent.

Region by region, State by State, farm real estate values have fallen as a result of the vicious circle initiated by declining incomes, namely, delinquent obligations, declining values, forced sales, and further declining values.

The greatest declines from a year ago were reported from the West North Central States, where the Bureau index (1912–14=100) declined from 81 to 64, a decrease of 21 percent. Declines during the year in individual States of this region ranged from 10 percent in North Dakota to nearly 28 percent in Iowa.

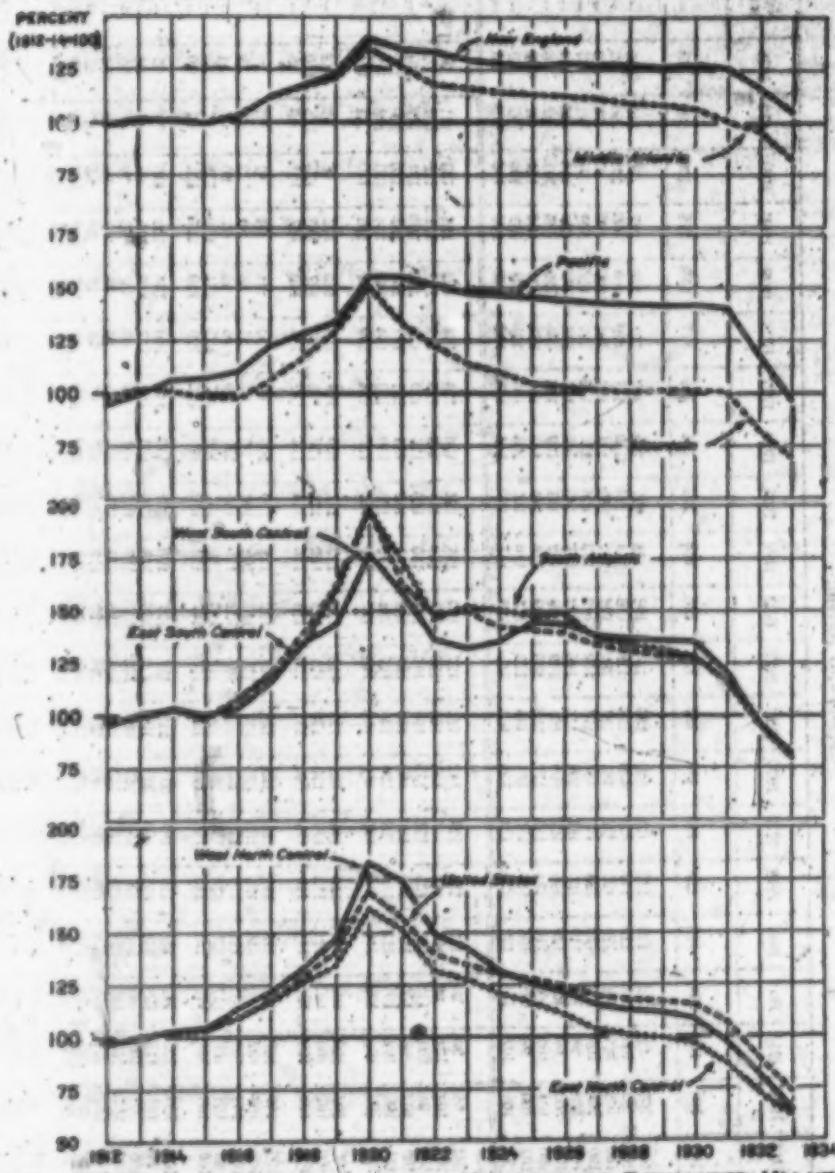

FIGURE 1.—FARM REAL ESTATE: INDEX NUMBERS OF ESTIMATED VALUE PER ACRE, AS OF MARCH 1, BY GEOGRAPHIC DIVISIONS, 1912-33.

Further declines in farm real estate values occurred during the year 1932-33. In only seven States were average values as of Mar. 1, 1933, higher than pre-war. During the decade from 1919-20 to 1929-30, the average value per acre of farm real estate, as measured by the Bureau index, declined 32 percent, but during the 3 years 1930-31 to 1932-33, it declined 37 percent.

TABLE 1.—*Farm real estate: Index numbers of estimated value per acre, by geographic divisions and States, 1912–33* [1]

(1912-14=100 percent)

Geographic division and State	1912	1913	1914	1915	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932	1933	Net change over 1912 [1]	
																								Per ct.
United States	97	100	103	103	106	117	130	140	170	157	150	155	150	147	146	139	139	136	116	100	80	73	−16	−18
Geographic divisions:																								
New England	96	101	103	99	102	113	117	130	140	135	134	130	128	127	125	127	127	126	127	126	116	106	−11	−9
Middle Atlantic	98	100	102	100	104	112	117	121	136	127	118	116	114	114	113	111	110	109	106	101	90	82	−16	−15
East North Central	97	100	103	104	110	116	127	136	161	161	152	136	121	116	111	104	101	100	96	87	73	63	−11	−15
West North Central	97	100	103	106	114	122	134	147	184	174	160	142	122	126	121	115	113	112	102	97	81	64	−17	−21
South Atlantic	98	100	103	98	108	119	135	161	188	174	146	133	131	148	149	137	134	132	126	116	98	80	−18	−17
East South Central	97	100	103	99	109	120	140	162	189	169	149	140	142	141	139	138	130	130	126	117	97	79	−18	−19
West South Central	96	100	104	100	108	119	134	143	177	160	136	132	136	144	144	139	137	135	126	121	97	82	−15	−15
Mountain	98	102	100	98	98	106	117	120	131	123	122	115	110	106	103	101	101	101	102	100	82	65	−13	−16
Pacific	94	99	106	107	111	123	130	134	146	146	151	148	147	146	144	143	143	143	142	140	119	96	−23	−19
New England:																								
Maine	100	102	98	98	98	110	118	134	148	138	137	130	127	124	126	124	126	123	124	123	111	94	−17	−15
New Hampshire	97	101	102	101	98	108	111	116	129	128	120	111	109	111	113	112	112	111	111	110	102	93	−10	−10
Vermont	101	101	98	104	115	127	130	136	140	140	145	134	130	126	126	126	126	126	126	121	113	101	−11	−10
Massachusetts	96	100	102	98	100	110	114	118	140	134	134	132	131	133	134	131	131	131	130	130	112	104	−8	−7
Rhode Island	100	101	100	102	106	113	116	128	130	130	127	126	126	128	130	133	134	134	134	132	126	118	−8	−7
Connecticut	98	100	102	100	102	110	116	126	137	134	140	137	140	137	137	136	136	136	140	140	123	124	−9	−7
Middle Atlantic:																								
New York	98	100	103	100	103	109	116	118	133	128	116	115	112	111	109	108	106	106	103	96	93	93	−10	−11
New Jersey	98	100	102	100	102	111	116	119	130	126	121	115	120	124	120	120	127	127	126	122	116	110	−8	−7
Pennsylvania	98	100	103	100	105	114	119	124	140	131	120	118	116	114	114	112	111	110	107	101	90	78	−18	−19
East North Central:																								
Ohio	98	100	102	107	113	119	131	138	159	154	134	122	118	110	106	99	96	94	90	82	73	59	−11	−16
Indiana	97	100	103	102	110	116	126	135	161	148	120	116	106	102	96	87	84	80	80	72	62	53	−7	−13
Illinois	97	100	103	102	105	111	119	130	160	153	136	122	116	115	109	99	96	96	91	80	66	54	−13	−18
Michigan	98	99	103	105	111	120	134	137	164	152	148	140	135	133	129	127	126	124	121	115	97	80	−17	−18
Wisconsin	97	100	103	104	117	124	133	142	171	166	164	147	139	130	125	122	120	119	117	104	91	80	−11	−12
West North Central:																								
Minnesota	96	100	105	107	122	136	156	167	213	213	187	177	170	159	156	143	140	136	123	110	98	79	−19	−19
Iowa	96	99	104	112	126	134	145	160	213	197	162	156	143	136	130	121	117	116	113	98	80	58	−22	−28
Missouri	97	100	103	102	106	115	126	137	167	166	133	127	117	112	104	99	96	96	93	79	67	55	−12	−18
North Dakota	97	100	103	103	112	116	124	130	145	141	128	128	114	109	106	100	99	98	96	83	73	66	−7	−10
South Dakota	96	101	103	101	106	116	126	145	181	173	146	136	117	115	107	97	96	96	93	82	67	55	−12	−18
Nebraska	96	100	102	101	104	110	127	145	179	166	144	139	126	123	123	119	117	116	113	100	80	60	−21	−23
Kansas	101	99	99	105	109	118	123	123	151	149	130	127	118	115	113	113	113	113	113	103	88	70	−19	−21
South Atlantic:																								
Delaware	100	101	99	100	105	113	124	129	139	139	119	110	107	113	114	111	111	111	111	107	95	80	−15	−16
Maryland	97	100	103	104	109	118	126	136	166	146	141	136	133	131	130	126	124	123	123	130	106	90	−16	−18
Virginia	97	100	103	97	117	126	142	167	189	180	157	170	163	154	148	139	137	136	134	117	99	88	−11	−11

West Virginia					
North Carolina					
South Carolina					
Georgia					
Florida					
East South Central:					
Kentucky					
Tennessee					
Alabama					
Mississippi					
West South Central:					
Arkansas					
Louisiana					
Oklahoma					
Texas					
Mountain:					
Montana					
Idaho					
Wyoming					
Colorado					
New Mexico					
Arizona					
Utah					
Nevada					
Pacific:					
Washington					
Oregon					
California					

[1] All farms land with improvements as of Mar. 1. Owing to rounding of figures, 1913-14 will not always equal exactly 100 percent.
[2] Minus (−) denotes decrease.

At the other end of the list is New England, where individual declines ranged from 6 percent for Rhode Island to 15 percent for Maine. For New England as a whole, the Bureau index declined from 116 to 105, or 9 percent.

Among other areas, considered as units, minor differences were exhibited. Average declines of 19 percent were reported by the East South Central and Pacific groups, an average decline of 17 percent was reported from the South Atlantic States, and 16 percent by the Mountain States. Values of real estate in the West South Central, East North Central, and Middle Atlantic divisions averaged 15 percent each below the levels of last year.

Considering States individually, the wide geographical distribution of large declines is even more evident. The largest drops were reported from Iowa and North Carolina, with decreases of nearly 28 percent and 25 percent, respectively.

Declines of from 21 to 23 percent were reported from such widely separated States as South Carolina, Idaho, Nebraska, Kansas, Arkansas, and Mississippi. Decreases from 14 to 19 percent were reported by 27 States, including at least 3 States from each of the 9 geographic divisions into which the United States is customarily divided except the New England and Middle Atlantic groups, from which there was 1 State each.

The 24 States reporting the largest relative decreases included 62 percent of the total land in farms, and 67 percent of the total value of farm real estate.

Judged by levels of values, relative to pre-war, reached as the cumulative effect of the depression, the North Central States, more particularly those of the Corn Belt, appear to have been most severely affected. In the Corn Belt States, values averaged less than two thirds of pre-war, and in the neighborhood of one third the peak values of 1920. In the Lake States of Minnesota, Wisconsin, and Michigan, values averaged around 80 percent of pre-war.

At the other extreme are the New England States, where the land boom of the twenties was felt less, and where the adversities of the recent years have pressed less heavily. For the group as a whole, values averaged about 5 percent above pre-war, with values in Maine, New Hampshire, and Vermont a little less, and those of the States farther south and closer to industrial centers averaging a little higher.

The Southern States as a group averaged in the neighborhood of 80 percent of pre-war. They averaged higher than the Corn Belt States largely by reason of the sustaining effects on values of the rebound of cotton prices in 1923 and 1924. In South Carolina and Georgia farm real estate values were lower, relative to pre-war, than in the neighboring States, owing in part, it appears, to the particular sequence with which the effects of boom cotton prices, subsequent deflation, and the bollweevil were experienced.

VALUES MORE NEARLY IN LINE WITH RENTS THAN IN EARLIER YEARS

Farm real estate values of course are predicated fundamentally upon income, and represent a composite market judgment of the present worth of future land income. Since it is future income, rather than past, that ownership of land provides, and since future

income depends upon numerous variable factors, there is an inevitable element of uncertainty in any estimation of present value. Both buyers and sellers need to consider this element of uncertainty and to allow for it, as it affects their respective interests. Since the factors entering into the determination of future land income are so complex, the tendency is to base estimates of the future pretty largely upon the experience of the recent past.

In periods of relative stability, confidence develops in the existing order, and the assumption that it will continue is the basis of business dealings, many of which involve long-time commitments. On the other hand, when customary relations become disturbed, the fundamental difficulty of accurately judging the future becomes evident, and people become more cautious in undertaking long-time contracts.

For example, the period 1900 to 1920 was one in which, by and large, farm incomes were increasing. The assumption seemed rather general, toward the end of the period, that the accustomed increase could be counted upon indefinitely, and current values reflected this assumption. As a result, the ratio of current net rents to current valuations became very low, and instances were not uncommon in which farmers were paying 6 percent interest on money borrowed to buy land priced to yield a much lower rate of return (*2*). An analogous situation existed in the security markets in 1929 (*13*). The prices of many stocks were such that the ratio of current dividends to current prices was very low.

With respect to farm real estate, these observations are illustrated by table 2, applying to Iowa. Attention has been called in previous yearly publications regarding the farm real estate situation to the upward trend over the last decade of the ratio of gross cash rent to the value of the land so rented. Gross cash rents, however, do not tell the whole story.

TABLE 2.—*Farm real estate rented for cash in Iowa: Approximate net rent per acre and proportion of current value based on current rents, 1921–33* [1]

Year	Average value per acre of cash-rental land	Gross cash rent per acre	Taxes plus estimated depreciation and repairs per acre	Approximate net rent per acre	Ratio of rent to value		Net rent capitalized at 4.5 per cent	Proportion of value represented by capitalized net rent
					Gross rent	Net rent		
	Dollars	*Dollars*	*Dollars*	*Dollars*	*Percent*	*Percent*	*Dollars*	*Percent*
1921	226	10.00	2.14	7.86	4.44	3.52	175	84
1922	188	7.36	2.15	5.21	3.91	2.78	94	50
1923	170	7.43	2.13	5.30	4.37	3.13	96	56
1924	164	7.16	2.15	5.01	4.39	3.19	96	58
1925	154	7.30	2.07	5.23	4.80	3.45	97	63
1926	157	7.53	2.12	5.41	4.81	3.48	98	63
1927	149	7.60	2.14	5.44	5.16	3.72	101	68
1928	142	7.73	2.15	5.60	5.46	3.94	102	72
1929	140	7.79	2.22	5.57	5.56	3.96	101	73
1930	130	7.27	2.20	5.07	5.60	3.90	101	78
1931	114	7.43	1.84	5.59	6.52	4.91	108	95
1932	93	6.99	1.79	5.20	6.24	4.69	79	85
1933	76	4.69	[2] 1.61	3.08	6.17	4.07	31	[2] 74

[1] All data preliminary. [2] Estimated.

To arrive at an approximation of the share of income attributed or imputed to real estate, it is necessary to deduct from the gross rent, the taxes, depreciation, and repairs that are chargeable against it.

The result, given adequate data, closely approximates the land income that may properly be capitalized in considering value.

Data on real estate taxes per acre have recently become available, and an allowance for depreciation and repairs to buildings has been calculated as 3 percent of building values. This figure is based upon farm-management surveys. Value of buildings has been estimated from census data and, since 1930, upon approximate changes in building costs. The results, although not applicable to any specific farm, are believed to be representative of the general trends involved in recent years.

In the first several columns in table 2 are given the value, gross cash rent, deductions, and approximate net rent for the period for which data are available. The next two columns present the ratio of the gross and net rents to value. These ratios have risen considerably from the low values of the early twenties, a slight down turn, however, being suggested by the 1933 data. Whether this down turn marks a definite change in trend cannot now be determined, but it is significant to note that the same change holds good for several of the other States of the region.

One possible qualification may be noted respecting rents for the last 3 years. The rents indicated are the contract rents, given at the beginning of the respective years. No information is available as to whether there has been subsequent modification of the contractual rents in line with the decline in prices of farm products. In view of the magnitude of the drops in gross farm returns during 1931 and 1932, it is entirely possible that concessions have been made and that the rents actually collected have been lower than those contracted. The values are also reported at the beginning of the year, and since a modification of rent would presumably involve a corresponding change in the estimate of value, it would appear on the whole that whatever bias may exist on this score is relatively unimportant.

It has been noted in earlier investigations[4] (*2*) that as a result of the long period of rising incomes leading up to 1920, current valuations involved to a large extent the capitalization of an expected continued annual increase in incomes. The investigation disclosed that, if the current interest rate on mortgage indebtedness be accepted as a fair capitalization rate, approximately 56 percent of the 1920 values in the central Corn Belt were based upon the anticipated *future increases* in net rents, and conversely, that only about 44 percent of the 1920 values represented capitalization of the then current net rents.

In table 2 a similar analysis is applied to the Iowa data on cash rents secured from the Department's crop correspondents. Capitalizing the estimated net rents given in table 2 at 5.5 percent, which is a close approximation to the average mortgage rate of interest in Iowa,[5] gives the values in the next to the last column. The propor-

[4] WILKINS, E. H. THE ECONOMIC BASIS OF FARM LAND VALUES. U.S.Dept.Agr., Bur. Agr. Econ., 23 pp., illus. 1928. [Mimeographed report.]

[5] The average rate of interest on farm mortgages in Iowa, according to the 1920 census, was 5.3 percent; the total costs of mortgage money was 5.58 percent, according to the 1930 census. The latter figure includes financing costs in addition to interest, estimated at from 0.1 percent to 0.3 percent. An investigation (*9*) in Story County, Iowa, indicated the modal rate of interest was 5 percent from 1900 through 1921, except for a brief period shortly following 1920, when it rose to 6 percent. The annual arithmetic mean interest rate fluctuated in the neighborhood of 5.5 percent, rising to more than 6 percent shortly after 1920 and then dropping again to 5.5 percent or slightly below.

tion of average value per acre represented by the capitalized net rent is indicated in the last column.

Three observations should be noted at this point. In the first place, it is not suggested that the capitalized net rents represent the true value of Iowa land in any 1 year. Value depends, as has been pointed out, not on income in 1 year, but upon all future incomes. It is likely, however, that had it been generally recognized in 1921 that net rents would not rise materially during the decade, values would have fallen somewhat more rapidly than they actually did in the earlier years of the decade.

In the second place, the mortgage rate of interest may not be exactly the proper rate of capitalization. Farming is a way of life as well as an occupation, and offers satisfactions that are not susceptible to exact measurement. These factors may lead to a willingness on the part of farmers generally to pay a higher rate of interest on mortgage money than they require on their own invested capital. For present purposes, however, it is not particularly important whether the correct capitalization rate is a little higher or a little lower than the mortgage rate. The essential point is the trend, and in the absence of evidence indicating definite changes in the theoretically correct rate, the mortgage rate seems to offer the best practical approximation to the rate of capitalization. A lower rate would result in larger figures in the next to the last column, but would not materially alter the direction of trend.

In the third place, it should not be inferred from table 2, that since current net rents capitalized at 5.5 percent do not account for the whole of current values, further declines in values will necessarily follow. As has been pointed out, it is as yet a matter for conjecture whether the mortgage rate of interest may or may not be too high for use in capitalizing net rents. Its use seems more justified in demonstrating the existence of trends than in forecasting the precise location of "turning points." The prospect of a series of definitely higher rents, as a result of higher incomes, would exert a very definite influence upon the situation. The effects, for example, of the somewhat increased gross income from farm production in prospect for 1933, may be expected to reverse some of the deflationary forces acting on farm real estate values. It is still too early to appraise the precise effects.

SUPPLY OF FARMS LARGE, SEVERAL TYPES OF POTENTIAL BUYERS

In the formulation of a long-time investment policy, not only the short-time factors, including the effects of recovery upon the low prices of early 1933, but also certain factors of a more permanent nature, need to be considered.

Of very great importance, for example, are the factors that may be expected to determine the trend of the general price level over a considerable period, as distinguished from such shorter time movements as may be expected to accompany recovery from the depths of depression. The effects upon farm real estate values of a long-time upward trend in the price level may be expected to be quite different from those of long-time downward or horizontal trend. Other circumstances such as those affecting the prospective food

requirements of the Nation, not only in the aggregate but with respect to specific groups of products, are of definite importance from the long-time viewpoint. Whereas, for example, in the earlier part of the century, some apprehension was felt concerning the adequacy of the food supply for the anticipated population, recent years have brought evidence indicating that little apprehension need be felt on this score. On the one hand, the prospect of a declining or stationary population by 1950 or 1960, and on the other, the improvements in technic of production, such as the possibilities in the use of fertilizer, changes in dietary habits, shift to mechanical power thus releasing land from producing feed for work stock, and shifts from less to more efficient producers of meat, appear to have materially altered the prospects with which the century opened insofar as the required food supply in concerned.[8] These factors, however, pertain primarily to the long-time point of view.

For the more immediate future, the demand for and the supply of farms are most significant. On the supply side, there are first, the large holdings of mortgage lenders, together with other land which is delinquent and subject to foreclosure. Many holders have evinced an indisposition to sell their better properties at existing prices, although there is no doubt that much foreclosed land has been sold below the value of the investment.[9] In view of recent developments toward higher prices of farm products, it appears likely that owners of foreclosed land will make vigorous efforts to recover at least their investment, wherever possible.

Another source of supply may be noted. A farm is a durable good, which sooner or later must pass to a new owner. Voluntary transfers have been greatly restricted for several years, and although the number of farmers who wish to sell out and go to work in the city has probably been reduced, it is likely that there are a considerable number of owners who have not had to sell, but who would be willing to do so at a reasonable price. Farms owned by older farmers, that would normally have been sold as their owners retired, may come on the market when conditions clear sufficiently. The Bureau data on transfers indicate an increased number of inheritances, which may in part result from the curtailed voluntary sales of recent years (table 12). Older farmers, unable or unwilling under circumstances of the last several years to sell out and retire, may have willed farms to their heirs, who may or may not wish to engage in farming. In the latter case, a potential supply of farms for sale exists.

A great deal depends upon the availability of credit. For farms acquired through foreclosure, fairly lenient terms of sale may be reasonably anticipated if experience of recent years is acceptable as a guide, for, although new credit has been restricted, fairly lenient terms have in many cases been offered to purchasers of foreclosed land. The rapidity with which a renewed supply of funds becomes available for financing farm sales will have an important effect upon the restoration of greater activity in farm real estate.

On the demand side may be mentioned the group of tenants. Tenancy, it may be noted, reached an all-time peak in 1930, accord-

[8] BAKER, O. E. THE PROSPECT FOR CONSUMPTION OF FARM PRODUCTS. U.S.Dept.Agr. 1932. [Mimeographed.]

[9] See p. 55.

ing to the census, when 42.4 percent of all farms in the United States were operated by tenants. Some of these have rented for years but have not bought for various reasons. With the high costs of ownership and the risks of buying in the face of an uncertain price level, many felt that it was more profitable to rent than to buy land. Some of these are potential purchasers who will enter the market when they believe conditions are right. Indications of a strong rental demand for the last few years suggest that the competition for farms to rent may encourage purchasing. In many cases, too, foreclosed farms are now being rented by former owners, some of whom have arranged repurchase agreements. If suitable terms can be arranged some of these are likely to enter again the ownership status, as conditions permit.

As has been widely noted the farm population is the highest in the Nation's history (4), partly as a result of natural population increase, and partly as a result of the lowered rate of cityward migration. Some of this group are potential farm buyers. But in considering their effect upon the land market, it must be recalled that a large proportion of this group have very restricted purchasing power as a result of prolonged unemployment, loss of savings in closed banks, or, on the part of younger farmers, the lack of opportunity to acquire capital. Part of them, on the other hand, are no doubt merely residing with parents or other relatives, and doubtless hope to return to their accustomed vocations at the earliest opportunity. There is some indication that many of this group, especially those from cities, are more interested in relatively small farms, preferably near cities, where part-time farming can supplement other income. The lower capital outlay required to swing such a deal is also a factor in favor of the small farm, for a small farm may often be bought outright for an amount that would form only the down payment on what the real farmer would consider a farm of desirable size. The events of recent years have suggested strongly the advantages of being free of debt, and it is likely that the lesson will be remembered for some time to come.

As a result, too, of the restricted flow of young people to the city, a larger number of young farmers may be expected to be coming into the market for farms, especially if, as some students fear, industrial opportunities are more restricted in the next than in the past decade.

A further potential source of farm buying that may become a considerable factor in the market is the investor. Some activity of this type has been in subdued evidence in recent years, and if the price situation continues to improve, it is not at all unlikely that investors will turn their attention more strongly to farm real estate. There are indications that buyers have been holding off, waiting for the bottom. The importance of this state of mind in the present situation is indicated by the widespread attention on the part of observers that has been given to the subject of commodity prices, interest, and tax rates. The normal expectation is, therefore, that a well-substantiated price rise among farm products would convince investors that the bottom had been reached.

From a broad point of view, the recent drastic shifts in the exchange relations between dollars on the one hand, and commodities

on the other, have probably served to bring more forcibly to the attention of many people the problems inherent in long-term commitments. Were contracts devised with sufficient flexibility so that loans might be kept in good standing even in times of drastic changes in price levels, the way might be opened not only to hastening the moving of the large number of farms now held by unwilling owners, but also to preventing a recurrence of a similar catastrophe of a wholesale loss of equities in the future. The use of some form of crop-payment plan is one method of meeting the problem. Another method, which has been developed as the basis of agreement between debtor and creditor in the current situation [10] (*12*), consists in a sliding scale of interest payments, depending upon an index of commodity prices. The possibility of applying some such plan to payments on principal, in addition to interest, furnishes an interesting field for exploration. By such a plan the prospective buyer might be encouraged to make a commitment, because the danger of losing his initial investment and succeeding payments as a result of factors beyond his control would be greatly reduced. Similarly, prospective sellers might be more willing to sell, rather than preferring to hold for the rise in prices, for, in case of such a rise, their payments would increase, and the advantages of holding their property would be largely attained. Thus, insofar as fear of further considerable changes in price levels discourages buying and selling, the clearing up of the foreclosed land situation would be facilitated by such contracts.

The fundamental factor in clearing up the present congested real estate situation lies in the development of a workable adjustment between prices of commodities sold, commodities bought, debt service, and taxes. Given the prospect for such an adjustment, progress may be expected. The large amounts of distress land and the restricted purchasing power of prospective purchasers suggest, however, that time will be required to work out a solution that will remove the major part of the debris from this depression.

The past year is one in which much attention has been given to these problems, and some progress is being made. Continued cooperation on the part of all parties concerned will accomplish much toward the eventual clearing of the situation.

Nevertheless, the cumulative effect of the pressure on farm real estate has resulted in a badly congested market. With the amount of involuntarily held land at high levels, and with additional amounts delinquent, much remains to be done before a normal market for real estate is restored. How rapidly this congestion can be cleared up and a normal market again restored is a subject for conjecture. No very great confidence can be placed in precedent, for the only period when distressed selling was at comparable levels, was the depression of the nineties. The satisfactory liquidation of involuntary holdings of that period was greatly facilitated by the persistent upward trend of farm real estate values beginning near the turn of the century, and concluding with the 1920 peak, during

[10] PECK, M. [ADJUSTING FARM RENTALS AND THE INTEREST LOAD TO CHANGING PRICES.] Iowa State Col., Dept. Agr. Econ. Nov. 2, 1932. [Mimeographed material.]

which time real estate values more than trebled. This upward trend, however, was the result of a peculiar combination of circumstances.

INCOME FROM FARM PRODUCTION WAS THE LOWEST IN MORE THAN 20 YEARS

Gross income from farm production in 1932 fell to the lowest level in the 24 years for which a statistical record is available (table 3, fig. 2). For the whole United States it was estimated (*14*) at

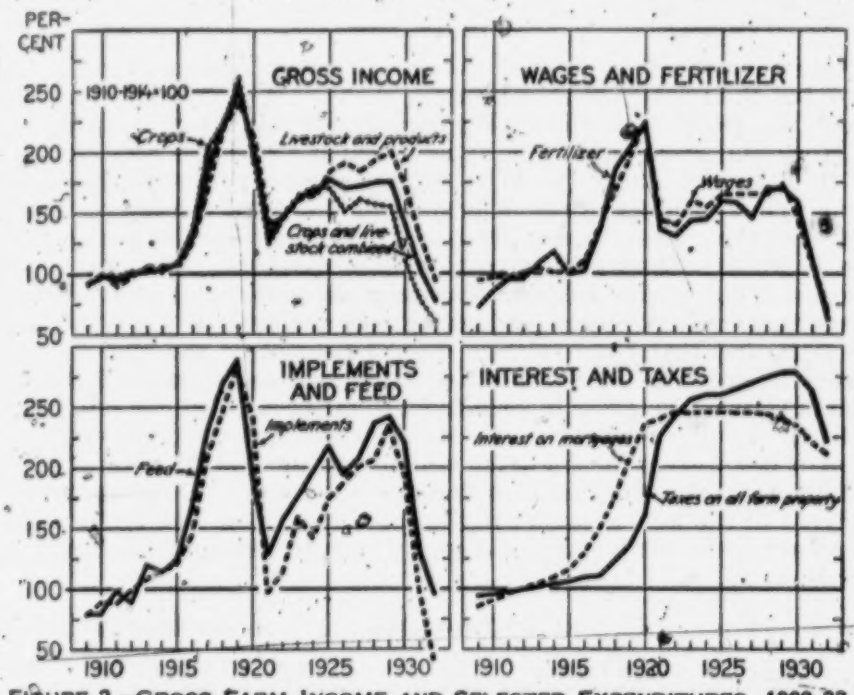

FIGURE 2.—GROSS FARM INCOME AND SELECTED EXPENDITURES, 1909-33.

Gross income from farm production, after remaining fairly stable from 1925 to 1929, declined rapidly, and in 1932 was over 1¾ billion dollars less than the average for the pre-war years 1910–14, and less than half the average for the 1924–29 period. Gross income in 1932 from crops was lower relative to pre-war than that from livestock.

$5,143,000,000, approximately 1½ billion dollars below the average for the 5 pre-war years, 1910–14, about 1¾ billions less than in 1931, and somewhat less than half the average for the period 1924–29. The reduction since 1929 has been predominantly due to price declines. From 1929 to 1932, gross income dropped 57 percent, whereas the volume of physical production for both home and market dropped only about 5 percent, and the Bureau index of prices received by farmers declined about 59 percent in the same period.

TABLE 3.—*Gross income from farm production of the calendar years, 1909–32*

Year [1]	Gross income	Year [1]	Gross income	Year [1]	Gross income	Year [1]	Gross income
	Million dollars		*Million dollars*		*Million dollars*		*Million dollars*
1909	6,238	1915	7,395	1921	8,927	1927	11,616
1910	6,643	1916	8,914	1922	9,944	1928	11,741
1911	6,372	1917	12,832	1923	11,041	1929	11,918
1912	6,784	1918	15,101	1924	11,337	1930	9,414
1913	6,975	1919	16,935	1925	11,966	1931	6,911
1914	7,028	1920	13,566	1926	11,489	1932	[2] 5,143

Income from farm production in the United States, 1932 (*14*).

[1] Crop year for crops; calendar year for livestock and livestock products.
[2] Preliminary.

Gross income from both crops and livestock was less than a year ago, but the relative change was less in the case of crops than of livestock, the relative decline having been 22 and 28 percent, respectively.

Hogs and sheep and wool experienced the greatest relative losses in the livestock group (table 4), whereas grain prices declined more than prices of other crops. Considering the total decline relative to 1929 (or the series of years preceding) crops, led by the grains, averaged greater losses than livestock and livestock products. Gross income from grains in 1932 was only 25 percent of that of 1929, gross income from cotton and cottonseed was only 31 percent of that of 1929, and that from tobacco was 39 percent of the 1929 amount. Gross income from fruits, nuts, and vegetables was about half the 1929 amounts, whereas gross income from sugar crops declined only about a fifth. In the livestock group the greatest declines occurred in the case of hogs, gross income from which was, in 1932, 35 percent of the 1929 amount; in the case of sheep and wool the 1932 income was 41 percent of the 1929 amount; in the case of cattle and calves it was 45 percent; while for poultry and eggs it was 49 percent; and for dairy products 54.

TABLE 4.—*Gross income from farm production by groups of commodities, 1929–32*

Source of income	1929	1930	1931	1932
	Million dollars	*Million dollars*	*Million dollars*	*Million dollars*
Crops:				
Grains	1,283	779	474	322
Fruits and nuts	706	567	453	340
Vegetables	1,132	943	724	596
Sugar crops	85	94	69	68
Cotton and cottonseed	1,389	751	528	431
Tobacco	286	212	132	111
Other crops	540	453	334	245
Total	5,421	3,799	2,714	2,113
Livestock and livestock products:				
Cattle and calves	1,171	951	681	502
Hogs	1,531	1,350	912	539
Sheep and wool	262	204	156	107
Poultry and eggs	1,230	1,050	809	603
Dairy products	2,323	2,081	1,614	1,260
Other	40	29	25	20
Total	6,497	5,615	4,197	3,030
Total	11,918	9,414	6,911	5,143

Income from farm production in the United States (*14*).

The close relationship between the course of gross income from various commodity groups and of their prices, is evident from tables 5 and 6. The former presents the Bureau's index of prices received by farmers for six groups of commodities and for all groups and

the latter shows the prices of principal individual commodities relative to the pre-war period, August 1909–July 1914. The lower indexes for the grains, cotton, and hogs explain in large part the lower

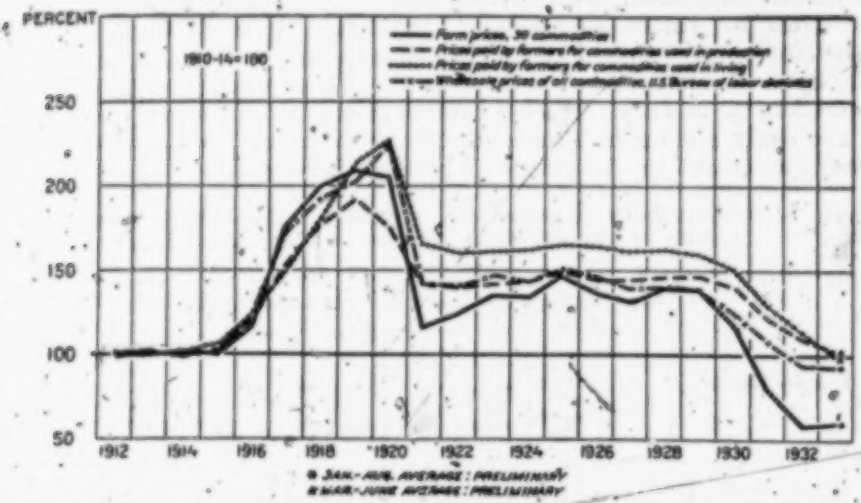

FIGURE 3.—PRICES RECEIVED AND PAID BY FARMERS, AND WHOLESALE PRICES OF ALL COMMODITIES.

Continuing the declines of recent years, prices of many farm products reached ruinous levels during 1932 before turning upward in the first half of 1933. Prices of commodities used by farmers, both for consumption and for production, declined less, relatively, than did prices of farm products, and responded less rapidly in the first half of 1933 to the influences encouraging higher prices. In August, prices received by farmers were lower than in July.

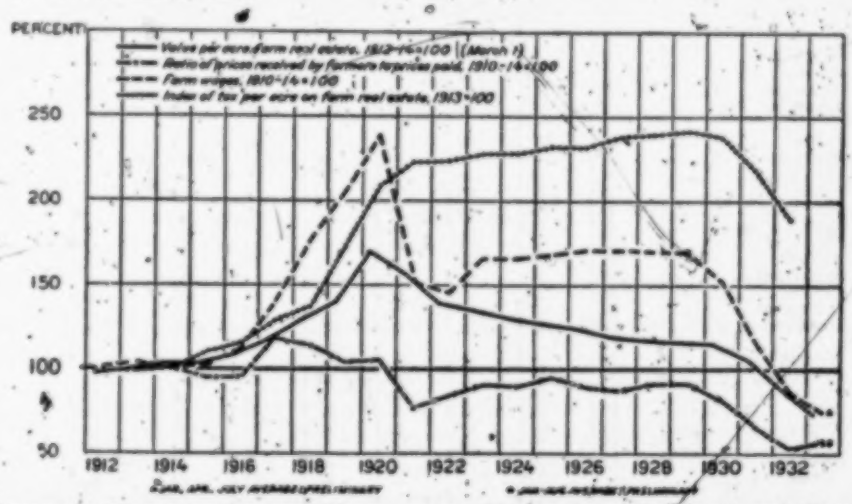

FIGURE 4.—RATIO OF PRICES RECEIVED TO PRICES PAID, FARM WAGES, TAXES PER ACRE ON FARM REAL ESTATE, AND VALUE PER ACRE OF FARM REAL ESTATE.

Taxes on farm real estate in 1932 were appreciably lower than in 1931, and wages to hired labor, and other operating costs declined. Farm real estate values, for the country as a whole, declined for the thirteenth consecutive year. Owing to the higher prices in the first half of 1933 the exchange value of farm products in return for other commodities increased. In August, however, it was lower than in July.

gross income received from these products. The trend of prices of farm products and its relation to other important series is presented in figures 3 and 4.

Since late 1932 or early 1933, however, the course of prices has been, in general, upward. From a low of 33 in December, the index for grains increased to 94 in July 1933; the index for fruits and vegetables increased from 57 in February to 120 in August; and the index for cotton rose from 43 in December to 84 in July. The index for poultry products, on the other hand, stood at 121 in December, 96 in January, and 54 in March. From that low point it increased to 67 in July. Much of the decrease from the winter months to the early spring was undoubtedly attributable to the strong seasonal movement in the prices of poultry products.

TABLE 5.—*General trend of prices and purchasing power for specified years, 1910–32, and by months, September 1931 to August 1933*

Year and month	Index numbers of farm prices (August 1909–July 1914=100)							Ratio of prices received to prices paid [1]	Wholesale prices, all commodities, U.S. Bureau of Labor Statistics, 1910–14=100
	Grains	Fruits and vegetables	Meat animals	Dairy products	Poultry products	Cotton and cottonseed	All groups		
1910	104	91	103	100	104	113	103	105	103
1915	120	83	104	98	103	78	100	95	102
1920	231	249	173	188	222	248	205	106	225
1925	156	160	139	137	161	177	147	95	151
1926	129	180	146	136	156	122	136	89	146
1927	128	155	139	138	141	128	131	87	139
1928	130	146	150	140	150	152	139	91	141
1929	121	136	156	140	159	145	138	91	139
1930	100	156	134	123	126	102	117	81	126
1931	63	98	93	94	96	63	80	65	107
1932	44	71	63	70	80	46	57	53	95
1931:									
September	50	83	86	92	99	47	72	60	104
October	46	70	79	95	110	42	68	57	103
November	57	68	76	95	123	56	71	60	102
December	52	68	68	92	120	45	66	56	100
1932:									
January	52	70	68	85	87	45	63	55	98
February	51	68	65	79	70	47	60	53	97
March	51	73	69	76	61	50	61	54	96
April	50	78	66	74	60	46	59	53	96
May	49	80	59	69	60	42	56	51	94
June	44	82	57	62	59	37	52	48	93
July	42	83	72	63	65	41	57	53	94
August	43	79	69	65	75	51	59	55	95
September	41	68	67	67	84	57	59	56	95
October	36	59	60	66	102	51	56	53	94
November	34	57	57	68	115	47	54	52	93
December	33	59	52	69	121	43	52	50	91
1933:									
January	36	59	51	68	96	45	51	50	89
February	34	57	53	62	57	44	49	49	87
March	36	60	56	59	54	48	50	50	88
April	47	66	57	59	56	49	53	52	88
May	62	68	65	63	62	65	62	61	92
June	63	74	66	65	55	69	64	62	95
July	94	103	66	71	67	84	76	71	101
August	81	120	63	72	67	71	72	64	102

[1] The value of a unit of the farmer's product at farm prices in exchange for commodities bought by farmers for use in both production and living, at retail prices, as compared with pre-war values (table 7).

TABLE 6.—*General trend of prices of individual products, for selected years, 1910–32, and by months, September 1931 to August 1933*

[Relative farm prices (August 1909—July 1914=100)]

Year and month	Grains			Meat animals				Fruits and vegetables			Dairy and poultry products				Cotton and cottonseed		Unclassified	
	Wheat	Corn	Oats	Cattle	Calves	Lambs	Hogs	Potatoes	Apples	Sweet potatoes	Milk	Butter	Eggs	Chickens	Cotton	Cottonseed	Hay	Wool
1910	110	96	102	92	96	108	113	77	102	88	100	102	105	103	113	114	95	116
1915	127	112	113	116	113	116	91	78	77	97	96	102	102	104	73	112	88	126
1920	250	220	196	163	178	202	180	353	204	196	177	214	223	224	260	235	177	214
1925	171	166	112	120	131	208	152	163	184	198	127	161	157	178	179	180	106	221
1926	153	109	97	124	143	196	163	269	127	178	125	163	147	192	122	124	110	186
1927	136	123	113	139	151	193	134	190	129	130	126	168	131	178	126	130	101	174
1928	128	139	123	176	174	205	121	119	152	125	128	173	141	186	159	174	99	203
1929	116	136	111	177	180	202	130	134	146	135	127	173	149	196	143	159	97	176
1930	92	121	95	145	147	139	122	178	140	132	114	148	117	162	100	119	96	119
1931	55	78	64	104	104	98	81	104	98	105	88	110	86	126	61	77	82	80
1932	44	44	46	78	74	75	48	62	73	69	65	83	74	102	47	44	63	84
1931:																		
September	40	67	50	96	103	85	75	86	74	93	84	109	89	138	48	41	75	74
October	41	58	50	92	97	79	65	66	61	75	85	119	106	126	43	35	72	70
November	57	57	58	92	89	76	60	66	64	66	86	117	123	126	49	53	73	74
December	50	54	56	84	83	71	52	66	67	67	83	114	119	122	44	50	73	72
1932:																		
January	52	52	57	82	83	75	52	62	66	70	77	106	80	117	43	47	72	70
February	50	50	57	78	86	78	49	64	68	70	74	92	60	111	47	46	71	73
March	50	50	57	82	84	86	54	66	74	73	71	90	48	111	50	46	73	70
April	49	49	57	81	75	87	49	67	82	78	69	86	47	113	46	44	78	62
May	48	47	55	75	69	81	41	67	86	74	64	79	45	107	42	44	71	51
June	42	46	50	73	69	76	39	64	96	71	58	73	49	100	37	40	64	40
July	40	47	44	67	74	74	58	70	90	73	60	72	56	103	41	39	68	39
August	44	47	37	84	73	70	56	74	68	78	60	77	66	103	52	41	57	42
September	42	44	36	88	76	70	52	58	60	63	62	78	80	102	56	51	57	51
October	39	39	33	78	70	67	45	49	60	50	63	79	106	94	52	47	55	53
November	37	30	33	72	66	66	42	40	59	43	63	80	121	89	48	43	53	59
December	36	29	33	66	62	67	38	53	64	44	63	84	131	81	44	40	52	52
1933:																		
January	37	30	34	63	61	69	37	54	68	48	62	81	100	82	45	40	51	50
February	37	30	33	64	70	71	41	53	69	50	66	72	51	82	44	40	50	49
March	39	32	34	66	68	72	44	56	73	53	65	71	47	80	49	42	50	50
April	51	44	48	68	65	73	44	61	82	57	64	73	45	85	60	45	52	57
May	67	61	54	76	67	80	54	63	88	64	66	78	55	91	66	55	54	99
June	66	63	58	78	67	88	58	71	92	65	69	78	47	88	70	58	54	120
July	98	86	98	76	68	89	55	140	90	77	86	84	61	91	85	75	59	128
August	84	76	81	73	70	89	52	188	78	106	89	80	62	86	71	71	68	136

There are only a few agricultural parts of the country which are not rather heavily dependent upon at least one of the three groups—grains, cotton, and hogs—each of which has experienced price declines of approximately two thirds or more from 1929 levels. Most of the remaining agricultural area includes those that are primarily dependent upon poultry, and poultry products, dairy products, vegetables, and fruits and nuts, cattle, and sheep. In the case of these products declines in gross income have closely approximated or even exceeded 50 percent in the period 1929–32. Thus it is that declines in realty values since 1929 have been so slightly divergent. Some significant differences existed between the levels reached as of that date, but the declines in major agricultural regions since then have differed relatively slightly.

Operating expenses of farmers have, of necessity, been curtailed over those of a year ago. The Bureau's estimate (*14*) [11] of total operating expenditures of farmers for 1932 was $1,351,000,000. This represents a drop of nearly 30 percent from the $1,921,000,000 of the year previous, which in turn was 32 percent less than the $2,824,000,000 of 1930.

Operating expenditures for the year represent 46 percent of the 1924–29 average, and gross income represents 44 percent of its average for the same period. Operating expenditures and gross income as a whole have thus been reduced almost, but not quite, in proportion. Significant variations appear, however, in the distribution of the decrease. Current expenditures for items directly associated with production, such as feed, seed, fertilizer, spray materials, and costs of operating tractors and automobiles, averaged 41 percent below the 1924–29 average.

Items of capital expenditure for machinery, automobiles, and trucks, or repairs on farm buildings declined 78 percent. Expenditures for these items can be postponed to a considerable extent. The old binder may be patched up to get through another year, and the painting or repairing of buildings can be postponed. These changes, particularly the former, result in a substitution of labor for equipment to some extent, and a more rapid rate of depreciation on permanent improvements. Continued long enough, delayed purchase of capital equipment means reduced output per worker and a return to more antiquated production methods. From the standpoint of the equipment industries, the decrease from an annual expenditure for new equipment and repairs of $1,000,000,000 to about $218,000,000 represents a sizable cut in production, which is, of course, reflected in lower payments for one or more of the items of raw materials, labor, and dividends.

Cash wages for hired labor have also been greatly reduced. From an average of nearly $924,000,000 for the years 1924–29, cash wages dropped to $809,000,000 in 1930, to $587,000,000 in 1931, and to $380,000,000 in 1932, a total reduction of 59 percent from 1924-29.

The expenditures considered so far are more or less flexible, and can be varied to some extent at the judgment of the operator. The items of taxes, interest, and repayment of principal on indebtedness are not so flexible. Some reduction in the tax burden on agricultural real estate has been accomplished, as is indicated by the decline in the estimated total of taxes payable [12] from $699,000,000 in 1930 to $664,000,000 in 1931, and to $556,000,000 in 1932. The total decline in taxes payable from 1930 to 1932 is 20 percent.

Most inflexible of all items of expenditure is that for interest payable.[13] From 1930 to 1932, this item has declined only 10 percent, or from $683,000,000 to $612,000,000. Most of this decline follows

[11] These operating expenditures include some capital outlay which should not be charged to a single year's operations in a strict accounting sense. But viewed from the standpoint of expenditure of available resources, they may be legitimately included. Further details are available in the reference indicated.

[12] As distinguished from taxes paid. A large but unknown amount of delinquent taxes exists.

[13] As distinguished from interest paid. It is known that there has been much delinquency on debt service, but it is not known how much of the delinquency applies to interest and how much to principal.

from the reduction in mortgage indebtedness outstanding.[14] There have been some cases where compromises of one sort or another have been worked out between debtor and creditor, thus reducing somewhat the interest charge. The total mortgage debt is estimated to have been approximately $9,000,000,000 as of January 1, 1930, and approximately $8,500,000,000 as of January 1, 1933. A considerable part of the decline is believed to have resulted from cancellation of debt by foreclosure.

Some of the relations between these changes are more clearly evident when the items of expenditure are expressed as percentages of gross income. Current operating expenditures varied only slightly from 16 percent of gross income during the 1924–29 period, but increased to nearly 21 percent in 1930–31, and to 22 percent in 1932, indicating that these items failed to decrease as rapidly as income.

Capital expenditures, on the other hand, varied from 7 to 10 percent during the 6-year period, but declined sharply after 1929, and amounted to only 4 percent of gross income in 1932. Cash wages to hired labor absorbed in the neighborhood of 8 percent of gross income, the ratio having changed only slightly during the whole period.

The combined items of interest and taxes averaged about 12 percent of gross income over the period 1924–29, with relatively slight variations. This was about one half higher than during the period 1909–16. The increase in debt during the 1910–20 decade was largely responsible for the increase. In the last 4 years, the share of income absorbed by these two items has very nearly doubled, in 1932 amounting to 22.7 percent of gross income, or about three times the 1909–14 share. In 1932 the share of total gross income represented by taxes payable was 10.8 percent and that by interest payable was 11.9 percent. As a matter of fact, however, less than half[15] the farms of the United States are mortgaged, and interest on mortgages is paid only by this share. Hence, on an average for mortgaged farms, the share of gross income that is claimed by interest, is probably nearer 20 percent than 10 percent. Since the amount of debt varies greatly from farm to farm, there are many farms on which the proportion is far greater than this.

The reduced expenditures noted have been accomplished partly through buying less and partly as a result of lower prices. Just how much of the decrease each of these factors is responsible for is not known. Undoubtedly great variations exist between different types of commodities. Since, however, the Bureau index of prices of commodities bought for use in production (table 7) declined only 27 percent from the 1924–29 level, and since total operating expenditures have been reduced 46 percent, it is evident that a considerable reduction in the physical quantities of goods bought has occurred.

[14] The total is based upon all bank loans, other than real estate loans, and on 90 percent of mortgage indebtedness, 10 percent of the total mortgage debt being assigned to farm dwellings.

[15] Forty-two percent, according to the 1930 census.

TABLE 7.—*Index numbers of prices paid by farmers, by years, 1910–32, and in stated months, 1930–33*

[1910-14=100 percent]

Year and month	Commodities used in production[1]							Commodities bought for family maintenance[2]	All commodities bought for both production and family maintenance	Wages paid to hired labor	Commodities bought for use in production plus wages paid to hired labor	Index of farm real estate tax per acre[3]
	Feed	Machinery	Fertilizer	Building materials for other than house	Equipment and supplies	Seed	All commodities bought for use in production					
1910	93	102	99	100	101	.....	98	98	98	97	98	.....
1911	107	101	99	102	100	.....	103	100	102	97	101	.....
1912	91	102	100	103	100	108	98	101	99	101	99	.....
1913	107	98	102	101	100	97	102	100	101	104	103	100
1914	102	96	100	93	99	99	99	102	100	101	99	101
1915	100	100	112	102	106	120	104	107	105	102	103	110
1916	130	107	120	117	129	142	124	124	124	112	121	116
1917	184	126	137	137	156	149	151	147	149	140	149	130
1918	198	155	170	161	181	190	174	177	175	176	174	137
1919	211	161	182	189	180	280	192	210	200	206	195	173
1920	137	167	186	205	189	152	174	222	194	239	189	209
1921	97	156	156	156	152	134	141	161	150	152	143	223
1922	123	142	129	159	140	130	139	156	146	148	141	226
1923	134	146	126	161	136	142	141	160	149	166	147	225
1924	142	152	120	161	133	151	143	159	150	166	148	229
1925	141	153	129	164	140	172	147	164	154	168	152	233
1926	137	154	126	162	144	214	146	162	153	171	152	233
1927	138	154	121	160	141	197	145	159	151	170	151	238
1928	148	154	131	158	138	179	148	160	153	169	153	239
1929	145	153	130	159	136	185	147	158	152	170	153	241
1930	132	152	126	155	131	174	140	148	144	152	143	238
1931	93	150	115	139	116	152	122	126	124	116	120	218
1932	69	141	99	126	107	102	107	108	107	86	102	189
1930:												
March	134	154	126	158	133	176	142	156	148	162	147	.....
June	135	152	126	157	132	176	142	152	147	160	146	.....
September	138	152	125	153	131	176	142	146	144	150	144	.....
December	120	152	125	150	128	168	135	140	137	129	134	.....
1931:												
March	108	151	119	144	124	174	129	134	131	127	129	.....
June	100	150	119	140	114	174	125	129	127	123	124	.....
September	83	150	110	137	114	133	117	124	120	113	116	.....
December	80	148	110	134	114	127	116	118	117	98	112	.....
1932:												
March	76	142	103	130	111	109	112	113	112	94	108	.....
June	72	142	103	127	106	100	109	108	108	87	104	.....
September	67	140	98	124	106	94	105	106	106	84	100	.....
December	62	139	90	123	104	94	104	103	103	74	97	.....
1933:												
March	73	135	91	119	103	85	101	99	100	73	94	.....
June	77	133	91	123	97	85	106	102	103	78	98	.....

Compiled from prices reported to the Department of Agriculture by retail dealers throughout the United States. The index numbers include only commodities bought by farmers, the commodities being weighted according to purchases reported by actual farmers in farm-management and rural-life studies from 1909 to 1928. Figures for other months used in table 8 are straight interpolations between the above quarterly reporting dates.

[1] 1912-14=100.

[2] Includes food, clothing household operating expenses, furniture and furnishings, and building materials for house.

[3] 1913=100.

In contrast, the aggregate physical quantities of agricultural marketings have shown little change from 1924 to 1929. In short, the agricultural plant and personnel have continued to provide about as much food and raw materials as in other recent years, but in exchange have received a smaller quantity of the goods and services produced by industry. The capital and personnel of the nonagri-

cultural part of the population have curtailed production very markedly, with idle personnel, and plants operating at fractional capacities. In the last analysis the total quantity of goods produced is the total quantity that can be consumed. As a result of unemployment, the decrease in purchasing power has been far from equal, especially among industrial and commercial workers, some having reduced their consumption only slightly, others to a mere subsistence level. In agriculture, on the other hand, the prime requisites of existence have, on the whole, been available—primarily because all were working. Some, of course, have lost their homes, and the proportion of physical production required to meet debt and interest charges has increased tremendously, as a result of price declines, leaving a smaller share to be exchanged directly for the products of industry.

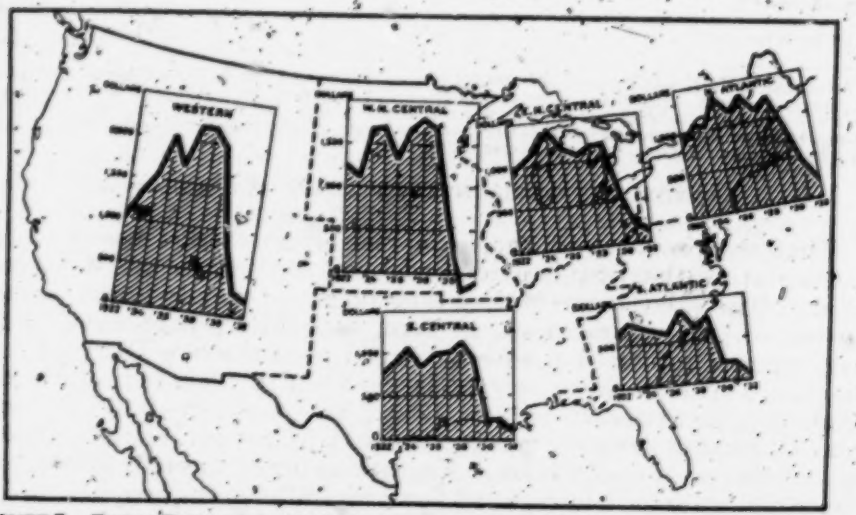

FIGURE 5.—FARM RETURNS, 1922-32: AVERAGE NET RESULTS ON OWNER-OPERATOR FARMS, BY REGIONS.

The average operating net results for 1932, as reported by the Department's crop correspondents, were lower than in 1931 in all but one geographic division. An average net loss was again reported from the West North Central States.

Another indication of the effects of the past year upon the fortunes of farmers is found in the reports of 6,383 owner operators for their own farms. The average size and average property values of the reporting farms are greater than the average for all farms reported by the census. Few of the reports relate to farms of less than 50 acres, whereas size groups of 80 acres and upward are well represented. The returns cannot properly be considered as average in the sense of applying to all farmers, but they are considered to be "representative" in the sense that both large and small, profitable and unprofitable farms are included, and they are distributed over all parts of the country. The year-to-year variations in the dollar figures in table 8 and figure 5 can be used only in a broad way—not for close comparisons of absolute and relative amounts of change.

The net results presented in table 8 consist of the average gross cash receipts, minus average current cash expenses, plus the change

in inventory value of personal property. The average net results, it will be observed, are far less favorable on the whole than for the preceding year. In addition to the net results indicated, these families during 1932 used food produced on the farm to the extent of $161 and had some fuel and the use of the farmhouse.

TABLE 8.—*Farm returns: Average net result of owner operators for their own farms for the calendar years 1922–32* [1]

Geographic division	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931	1932
North Atlantic	$836	$1,070	$1,022	$1,332	$1,166	$1,332	$1,106	$1,254	$892	$443	$180
East North Central	928	1,090	1,156	1,370	1,499	1,668	1,170	1,178	604	208	119
West North Central	1,232	1,110	1,654	1,680	1,325	1,642	1,798	1,684	895	−178	−98
South Atlantic	629	740	656	616	569	818	639	764	214	218	41
South Central	735	890	1,069	824	973	980	1,121	987	217	216	88
Western	986	1,310	1,506	2,047	1,694	2,179	2,171	1,994	868	242	178
United States	917	1,020	1,205	1,297	1,133	1,290	1,334	1,208	538	154	66
Number of reports, United States	6,094	16,182	15,103	15,330	13,475	13,859	11,851	11,808	6,228	7,437	6,383

[1] Average gross cash receipts from sales, minus average current cash expenses, plus change in inventory of personal property. The following items are not included: Interest paid, expenditures for farm improvements, estimated value of food produced and used on farms, estimated value of family labor, including owner, and estimated change in value of real estate during year. Full details have been published for each year in Crops and Markets, the latest figures in July 1933.

PROBLEMS WERE INTENSIFIED IN ALL AREAS

That the problems of the farm real estate market became more acute during the year is evidenced by reports from nearly all sections. These developments had their origin primarily in the reduced incomes of the year, which, in turn, were directly associated with lower prices rather than with decreased production. The total area harvested in 1932 was 1 percent larger than in 1931, but a little less than that harvested in 1929 or 1930. The composite yield per acre was 3.6 percent greater than in 1931, but 1.4 percent below the average of the previous 10 years. Conditions have varied from State to State, and in some States, as in Iowa and Michigan, favorable growing conditions and better-than-average yields were experienced. Some others were not so fortunate, a March freeze in Texas, low wheat yields in Kansas, and unfavorable weather in Maryland, for example, having added to the distress in their respective regions.

Price declines were such that, combined with the variations in production that occurred, gross income from farm production was lower than a year ago in each of the 48 States. The biggest drop from a year ago, 46 percent, occurred in South Dakota. By a strange coincidence the smallest decrease, 2 percent, occurred in North Dakota. The reason for the small decrease is found in the fact that income in North Dakota the previous year was very low because of unfavorable growing conditions.

In more than half the States, gross income from farm production for 1932 was from 20 to 30 percent lower than in 1931. The greatest average declines by geographic divisions were in the West North Central States, where gross income for 1932 was 33 percent less than in 1931. In the East North Central States it was 29 percent lower, and in the Mountain States 25 percent. Somewhat less severe were the declines of 18 percent in the Pacific States and 19 percent in New

England. Decreases in gross income in the South Atlantic, East South Central, and West South Central States averaged 22 percent. With this background of diminished ability to pay, financial difficulties multiplied.

With respect to new financing, the characteristic features of the situation were a scarcity of new loans, lower appraised values, and greater care generally on such loans as were made. Many of the agencies formerly active in mortgage financing had withdrawn their activities from several, if not all, regions. The Federal land banks are frequently reported as the only source of mortgage credit left for some areas. Appraisals are reported as having been cut further, and the personal qualifications of the applicant for loans were more carefully scrutinized. The volume of credit available for financing normal buying and selling of farms has thus been seriously curtailed.

Of more pressing importance were the developments respecting the handling of existing indebtedness. In this regard, also, the problems of most areas exhibited many points of similarity.

In the earlier years of the depression real estate in difficulty usually involved junior financing of some sort. The extent to which junior mortgages the country over were liquidated is not known. In Iowa, however, a recent study (*[illegible]*) leads to the conclusion that junior mortgages had been pretty well liquidated by 1930.

The renewed reduction of incomes involved an increasing number of mortgages which originally were considered as conservative investments. Foreclosures, of course, multiplied, but the increasing wave of delinquencies brought greater difficulty in realizing the indebtedness at the sheriff's sale, and mortgagees had to bid in properties with increasing frequency, with the result that they soon accumulated large amounts of distressed real estate. These in turn required management and administration. Mortgagees soon came to the conclusion that it was usually more advantageous to all parties concerned for the farmer to remain in possession than to attempt other forms of operation, and the nature of the problems involved appears to have become more generally recognized than earlier. Consequently, during the past year, it is reported that mortgagees appear to have developed a greater willingness to cooperate with mortgagors. The exact nature of the arrangements made depends to a considerable extent upon the region involved, the extent and nature of the indebtedness, the character of the mortgagor, and the policies of the mortgagee.

In many cases loans have been extended if interest and taxes were paid and if the owner prevented undue deterioration. In others the farmer has been required to pay at least the equivalent of a reasonable rent. Some cases were reported from Wisconsin in which, although loans have been extended, the farmer has been required to divide his cream check on a 50–50 basis.

Policies varied, however. From Wisconsin and Nebraska have come reports that companies have secured quitclaim deeds and sold to the original owner under a new agreement. Under this plan the new sale price may have involved a reduction of indebtedness or terms more suited to conditions. Again some creditors are said to have been willing to make substantial sacrifices to get the loans paid.

On the other hand, some mortgage-lending agencies have been reported as "hard-boiled", forcing collections by foreclosure.

The consensus of opinion of correspondents appears to be that loan companies in general are not anxious to acquire more land and for the most part are willing to cooperate with the farmer who does the best he can, but they are ready to take such steps as may be necessary to protect what they believe to be their rights and interests.

When land is acquired, differences in policy exist. The general tendency appears to be to dispose of the less desirable farms at once and to maintain the better farms in good shape for later sale. Other cases are reported of foreclosing and then selling at a loss, or permitting places to deteriorate seriously. The latter places are probably of poor quality.

The year has brought a general realization that a debt structure erected during high prices cannot be carried by a greatly reduced level of income and that restored income, or reduced debt, or a combination of the two, is essential to recovery. Working along the latter line, the Federal Government has provided legal processes designed to facilitate debt adjustment, has established machinery to assist in refinancing where it is feasible, and has embarked upon an extensive program for the purpose of raising prices paid to the farmer. The cooperation of all parties is needed to assure the ultimate solution of the problem.

REGIONAL TRENDS INFLUENCED BY DIVERSITY OF FACTORS

A general index of changing land values for any considerable geographic area reflects the composite effect of the dominant economic factors at work in the area. Where primary interest centers in the broader aspects of the subject, such an index, in which the local or transitory factors tend to average out, is essential. When the fundamental pattern is recognized, however, those interested in particular cases find it necessary to investigate certain of the more localized circumstances.

From the standpoint of the investing farmer, for example, knowledge of the general outlook for the type of agriculture in which he is interested is indispensable. In the case of wheat, such factors as production trends in other countries, prospects for the expansion or contraction of international trade, the circumstances conditioning the demand for the product, developments in the technic of production, and the competitive position of wheat as contrasted with other farm products are fundamental. In addition, however, consideration must be given to the effects which such prospective developments will have upon the various regions in which wheat production is important. A factor that operates to the advantage of one region may affect another region adversely. As such changes occur the attempt of farmers in each area to find the most advantageous combination under existing circumstances brings about shifts in production. Such changes are likely to be reflected eventually in land values.

The problems of the investor in farm mortgages are somewhat similar. Considerations affecting the safety of the investment are of prime importance. That size of farm may in certain areas be important is indicated by the experience of one large loaning organiza-

tion (*5*). It was found that relatively few foreclosures occurred in the case of small farms, but that the percentage of foreclosures increased for the larger farms. This experience is intimately associated with the character of the particular area and with the appraisal and loan policies of the organization, and is not necessarily applicable to other circumstances or areas. But it suggests that it is important to consider size of farm in relation to the characteristics of the area.

Data based upon the census afford valuable information concerning intrastate changes in land values and the effects of size and value per acre upon value trends.

During the decade 1920–30—on the whole a trying one for agriculture—there were substantial areas in which average farm-land values were higher in 1930 than in 1920, even though the average value per acre for the United States as a whole was roughly one third lower at the later date. This situation is illustrated in figures 6 and 7, which are based upon census data by counties. The predominant trend is downward, yet substantial sections of New England and other eastern seaboard States, parts of the Pacific coast and of the South, particularly western Texas, as well as several other scattered areas, experienced increasing values.

In the North Atlantic States, the more important factors involved are generally recognized. The closeness of a concentrated and growing market for food products, expanding suburban residential areas, increasing emphasis upon specialty crops, together with the abandonment of lower grade and inaccessible farms, all combined to raise the average value per acre of the area enumerated in 1930 over the acreage enumerated in 1920.

In western Texas, in Oklahoma, and in Kansas, the transition from a less intensive to a more intensive use, through the expansion of wheat and cotton to the parts of these areas to which they are respectively adapted is largely responsible for the higher average values there.

The higher acre values in Louisiana, Mississippi, and Alabama are probably partly nominal because of certain changes that were made in the procedure of the census enumeration. Whereas, for example, the average value per acre of land and buildings for Alabama, as reported by the census, was 3.1 percent higher in 1930 than in 1920, the average value per acre of land alone was 5.0 percent lower. In Louisiana the reported decrease in value per acre of land and buildings was 5.5 percent, but in land alone it was 12.5 percent. Similarly, in Mississippi, the acre value of land and buildings decreased 24.5 percent during the period, and land alone 32.8 percent. Similar relations are evident for individual counties. Of the counties in these three States reporting an average value per acre of land and buildings higher in 1930 than in 1920, the value of the land alone, with few exceptions, either increased less than land and buildings or actually decreased. In the cases of most of the counties reporting a lower average value of land and buildings in 1930, larger relative decreases were reported for land alone. These relations, together with other circumstances, suggest rather definitely that part of the reported increase in building values is nominal rather than real.

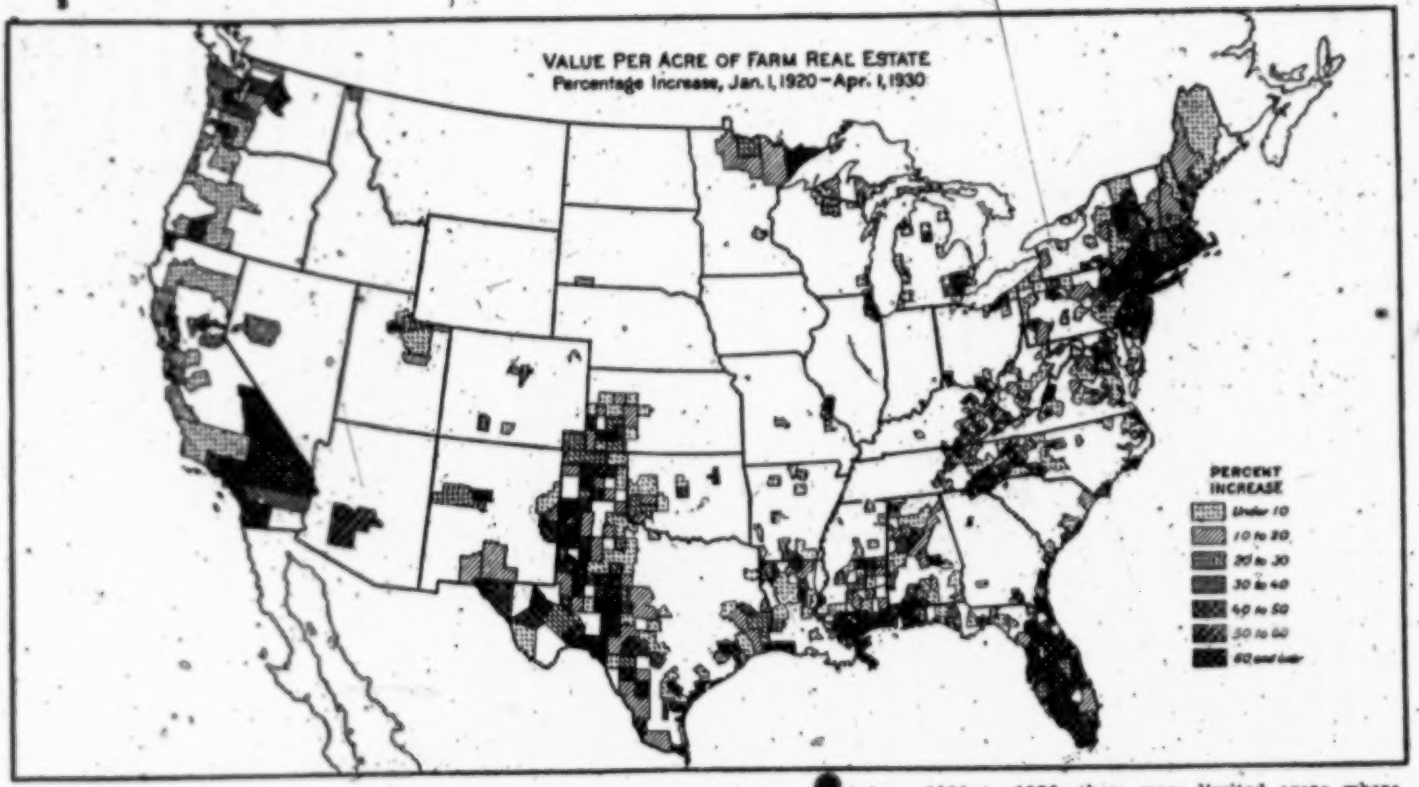

FIGURE 6.—Although the trend of farm real estate values was in general, downward from 1920 to 1930, there were limited areas where values apparently increased. Shifts in farming areas, the influence of growing cities, and the development of irrigation areas are among the local factors having significant effects upon land values.

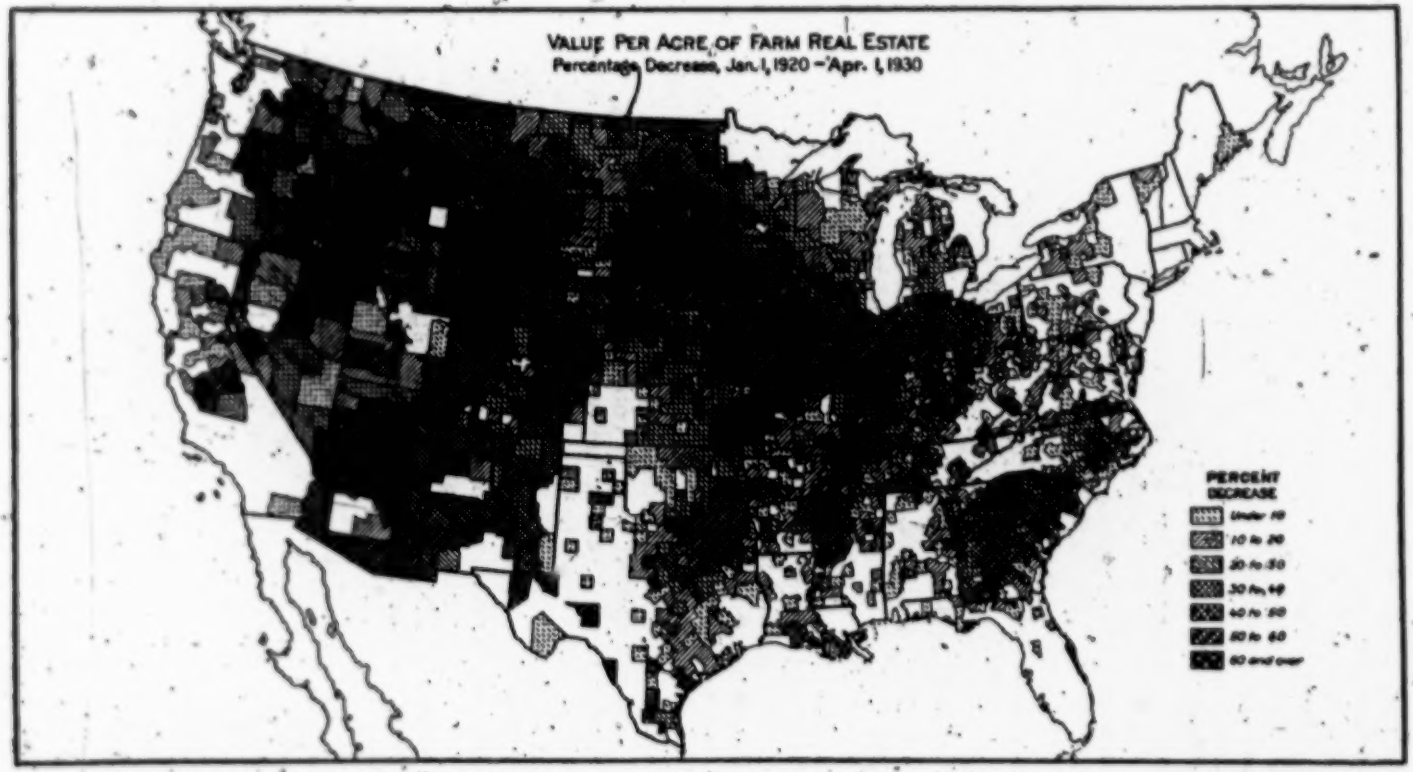

FIGURE 7.—Although farm real estate values in 1930 were in general lower than in 1920, the changes were far from uniform. There were significant differences between geographic areas, even within States, as well as between farms of different size and different grade.

It is probable, however, that part of the differences in average value of real estate indicated by the census between Mississippi and Alabama, on the one hand, and Georgia and South Carolina on the other, has real significance. Reduced yields as a result of the boll-weevil infestation were experienced by Mississippi and Alabama in the latter part of the decade 1910–20, and although the high prices increased incomes, land values in these States, especially in Alabama, did not rise so far above those of 1910 or even of 1900 as they did farther east. Consequently, higher yields in some of the later years operated in the direction of sustaining values. In Georgia and South Carolina, on the other hand, the boll-weevil struck later, and values there received the impetus from the high cotton prices before they had reflected the full effects of the weevil. Consequently, when prices fell, and as the effects of the boll-weevil accumulated, they declined more later. High prices, the boll-weevil, and depression appeared in what was apparently a more unfortunate sequence than occurred farther west. At least in 1930 land values in Georgia and South Carolina were lower relative to the pre-war level than in Mississippi and Alabama.

Several more-or-less isolated areas of increasing values appear in the neighborhood of several of the larger cities throughout the country. St. Louis, Salt Lake City, Chicago, the Twin Cities, Detroit, Cincinnati, and Cleveland stand out prominently, and several eastern cities are surrounded by such general areas of increase that individual cities are obscured. Adjacency to large cities means that farm land in the neighborhood is subjected to the combined influences of expanding suburban or residential areas, expanding requirements for industrial or commercial sites, and increasing opportunity for producing for a specialized, highly concentrated local market.

The segregation of such areas has been facilitated by a study of metropolitan areas (*15*) based on the 1930 census. The more direct effects of nonagricultural factors may perhaps be removed by considering separately on the one hand the average value of farm land in those counties parts of which are included in the metropolitan areas as defined by the census,[16] and on the other, average values in the other counties of each State. These data are presented in table 9. Comparison with earlier years is afforded by comparable data.

[16] The basis of determining these areas is explained by the following paragraph from the census: "The metropolitan districts for the census of 1930, as here presented, include, in addition to the central city or cities, all adjacent and contiguous civil divisions having a density of not less than 150 inhabitants per square mile, and also, as a rule, those civil divisions of less density that are directly contiguous to the central cities, or are entirely or nearly surrounded by minor civil divisions that have the required density."

TABLE 9.—*Farm real estate: Average value per acre in all counties, in counties partially or entirely included in metropolitan areas,[1] and in counties located entirely outside of metropolitan areas, by States, [2] 1910, 1920, 1925, and 1930*

State	1910			1920			1925			1930		
	All counties	Counties in metropolitan areas[3]	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas	All counties	Counties in metropolitan areas	Counties not in metropolitan areas
Massachusetts	$67.51	$76.06	$42.40	$99.25	$116.41	$54.49	$107.53	$126.70	$61.73	$130.20	$153.03	$73.79
Rhode Island	63.01	79.69	30.79	79.58	100.04	43.06	90.55	109.83	51.40	123.52	150.62	68.62
Connecticut	63.28	74.04	32.03	100.20	119.60	47.08	110.22	138.87	57.29	151.38	185.89	67.39
New York	53.78	94.99	42.36	69.07	118.15	55.98	70.96	130.23	57.73	73.19	130.63	59.05
New Jersey	84.36	98.44	58.29	109.67	126.22	80.28	138.42	137.91	99.20	180.99	198.99	120.89
Pennsylvania	56.01	83.71	37.93	76.14	109.49	53.89	71.81	104.07	50.97	73.58	134.58	50.77
Ohio	68.62	84.04	64.95	113.18	136.62	107.79	87.57	127.09	78.87	78.60	124.25	69.52
Indiana	74.85	88.82	73.63	126.98	139.20	124.83	85.15	111.58	82.91	71.90	102.96	69.36
Illinois	108.32	126.97	106.17	187.59	196.66	186.62	126.65	138.14	131.65	108.68	166.53	102.67
Michigan	47.58	65.19	45.47	75.48	130.16	69.65	71.20	143.64	64.16	67.80	158.22	60.25
Wisconsin	57.06	106.34	54.86	96.78	147.91	93.59	88.90	142.22	84.42	79.16	162.47	73.75
Minnesota	45.62	66.41	44.77	109.23	107.26	109.33	79.63	95.52	78.65	68.74	94.30	67.34
Iowa	96.00	124.33	94.97	227.09	261.92	225.83	146.87	190.06	147.44	134.18	181.30	122.85
Missouri	49.61	104.86	47.11	88.08	174.34	85.30	61.37	141.22	58.94	53.23	166.10	49.92
Nebraska	46.95	120.92	[illegible]	87.91	262.51	86.62	60.08	210.09	59.00	55.81	187.19	54.89
Kansas	40.05	93.[illegible]	[illegible]	62.30	129.61	60.36	50.26	119.50	48.79	48.86	122.16	47.05
Delaware	51.17	88.[illegible]	[illegible]	68.56	98.61	52.66	68.33	100.62	55.85	74.31	139.31	54.88
Maryland	47.80	71.[illegible]	37.[illegible]	61.25	105.62	70.91	77.00	113.20	62.40	81.42	126.51	63.87
Virginia	27.29	62.25	25.[illegible]	55.19	103.75	53.21	51.53	113.30	49.15	51.16	126.04	48.64
West Virginia	26.37	31.41	25.[illegible]	42.93	51.67	42.10	39.66	58.73	38.01	38.85	54.20	37.43
Georgia	17.78	32.19	17.28	44.74	72.30	43.71	26.77	48.42	25.96	26.15	62.62	24.91
Florida	22.49	59.47	20.51	46.56	109.74	43.05	81.67	225.70	71.10	84.22	233.42	77.29
Kentucky	28.64	54.60	27.34	60.39	89.67	58.98	42.56	78.28	40.92	43.73	85.53	41.69
Tennessee	23.98	58.82	22.08	52.53	97.24	49.99	42.42	87.61	39.76	41.28	98.73	38.02
Alabama	13.90	51.71	13.47	27.77	89.90	27.43	24.78	57.00	24.48	28.62	88.40	27.99
Arkansas	17.78	39.55	17.27	43.14	105.25	41.52	34.89	70.51	33.42	34.13	80.65	33.04
Louisiana	22.78	98.96	22.28	47.81	196.43	46.83	36.74	132.92	36.11	44.70	194.60	44.23
Oklahoma	25.60	28.58	25.41	42.68	50.46	42.30	33.97	43.97	33.44	36.78	45.96	36.21
Texas	16.39	23.84	16.08	32.45	92.59	31.37	27.77	38.11	26.71	28.85	91.82	27.74
Colorado	30.19	46.40	29.07	35.40	60.63	34.28	24.51	51.39	23.20	21.79	54.08	20.34
Utah	34.60	85.40	29.74	48.26	97.90	43.81	38.43	118.15	34.26	39.41	142.16	33.67
Washington	48.84	94.56	43.74	69.49	119.20	64.19	57.64	113.66	51.69	57.17	118.33	51.02
Oregon	38.99	120.05	34.49	49.86	156.28	44.84	43.60	164.51	38.15	38.12	163.36	33.43
California	51.93	107.77	38.37	104.67	202.74	81.41	11[illegible] 57	262.74	82.44	112.33	293.62	78.83

[1] Counties classified in each year on the basis of their relation to metropolitan areas in 1930.
[2] States, no part of which is included in the census category of metropolitan areas, are excluded from this table.
[3] Counties wholly or entirely included in a metropolitan area.

Table 9 illustrates one of the reasons why differences exist between an indicator of change in value based primarily upon typical agricultural land, such as the Bureau index, and relative changes as reported by the census, which includes all land in farms regardless of location. Although much land in the vicinity of cities is farmed, and enumerated by the census as land in farms, it is often held at values considerably in excess of its value for strictly agricultural purposes, because owners anticipate appreciation on account of possible residential or industrial use. Not all land near cities is thus affected, but to the extent to which this factor is operative there is a bias in estimates of change in value of strictly agricultural land based on such data.

In nearly every State in which there were metropolitan areas as defined by the census, the average value of farm real estate was greater in those counties, some part of which lay within a metropolitan area, than in those counties lying wholly without such an area. In most instances the differences were considerable. Except

in the Northeastern States, however, the area of farm land in the metropolitan areas has been so small, relative to the State total, that its exclusion usually makes only a few dollars difference in the State average, but in most States as far west as Ohio and as far south as Maryland, exclusion of such farm land makes a substantial difference in the State average.

There have been, in addition, significant differences in the rate of change of values. The decade 1910 to 1920 was one of rapid increase in value in practically all regions. In many States, particularly in the Middle West and the South, farm real estate in counties wholly outside metropolitan areas increased in value more rapidly than that in other counties.

The next decade was unfavorable to agriculture. When counties lying wholly or partially within metropolitan areas are excluded, in only 7 of the States in table 9 did average values of farm real estate increase during the decade, and 5 of these States were in the New England and Middle Atlantic groups, the other 2 being Alabama and Florida. In only 2 States, Massachusetts and Rhode Island, was the relative increase in value greater than that in the excluded counties. In all except these 7 States and Arkansas land valued primarily for agricultural purposes declined far more than farm land in the vicinity of cities. In fact, value per acre of farm real estate in many of the counties lying partially within metropolitan areas increased markedly during the decade.

These differences show plainly when the relative changes in average value from one period to another are compared, all farm real estate being used in one case, and that in counties lying partially in metropolitan areas being excluded in the other.

In Ohio, for example, the increase in average value per acre of all farm real estate from 1910 to 1930 was 14.7 percent, but if certain counties are excluded on the basis indicated, the average increase was only 7 percent. In Indiana, exclusion of the counties indicated alters the average change from a decrease of 3.9 percent to a decrease of 5.8 percent. In Michigan the average change is reduced from an increase of 42.5 percent to 32.5 percent, and in California it is changed from an increase of 116.3 percent to 97.6 percent.

In Wisconsin and in most of the west North Central, Southern, and Western States the differences in relative change are of less importance.

SIZE OF FARM AND VALUE PER ACRE AFFECT VALUE TRENDS

Not only do changing economic conditions bring about different results in different localities, but they also affect unequally farms of different sizes within the same general area. Farms very much smaller or very much larger than the typical farm usually differ in essential features of their organization from the typical farm. They are likely, therefore, to be affected by economic changes to a different degree, or even in a different direction, than the typical farm. Small farms, for example, often tend toward the truck or poultry type, whereas large farms often tend more toward livestock enterprises. Obviously, since prices of different groups of farm products do not usually change together and since considerable

shifts in farm organization cannot usually be accomplished at once, it may be expected that, in general, values of farms of different sizes will change at different rates.

That these expectations are realized is indicated in table 10, in which changes in value per acre for farms of different sizes for specified periods are presented. For the United States as a whole the average value per acre of farm land and buildings, as reported by the census, increased 75 percent from 1910 to 1920, and then decreased 30 percent during the following decade, leaving a net increase of 23 percent over the 20 years. For farms under 20 acres in size, however, the net change for the period was an 85 percent increase,[17] and for farms of 1,000 acres or over, the net increase was only 3 percent.

TABLE 10.—*Value per acre of farm real estate: Relative change for specified periods, by size of farm, for the United States and for groups of States*

Size of farm (acres)	United States			New England States			Middle Atlantic States			East North Central States			West North Central States		
	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
Under 20	62	14	85	43	43	103	25	53	92	51	26	90	64	3	69
20 to 49	85	−11	66	51	37	107	29	28	66	65	−7	54	84	−20	47
50 to 99	81	−22	41	50	29	94	37	7	48	67	−28	21	103	−36	31
100 to 174	100	−30	41	51	32	84	34	0	34	70	−37	8	134	−39	43
175 to 499	86	−32	28	53	15	78	29	−1	28	72	−41	2	108	−41	19
500 to 999	58	−30	11	56	17	85	34	30	74	59	−34	4	80	−39	3
1,000 and over	47	−30	3	75	41	146	51	47	122	58	6	69	26	−35	−19
All farms	75	−30	23	48	22	81	31	9	42	60	−34	12	91	−40	14

Size of farm (acres)	South Atlantic States			East South Central States			West South Central States			Mountain States			Pacific States		
	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30	1910-20	1920-30	1910-30
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
Under 20	97	10	117	120	−28	76	102	1	104	19	21	43	43	23	74
20 to 49	135	−18	92	123	−22	74	121	−14	96	42	−15	19	64	−3	61
50 to 99	121	−22	73	109	−30	67	117	−21	71	74	−28	31	99	−1	98
100 to 174	114	−23	68	113	−34	68	104	−16	73	134	−10	111	101	10	121
175 to 499	112	−21	68	114	−25	80	94	−12	70	80	−12	14	88	12	77
500 to 999	117	−15	83	117	−21	73	83	−6	71	4	−26	−23	88	−11	41
1,000 and over	87	15	116	115	−13	90	63	−7	53	28	−49	−33	59	−22	23
All farms	123	−16	87	119	−21	73	98	−13	74	22	−42	−30	72	−4	66

Based on data from the census.

If the average-sized farm may be considered as the typical farm, it may be said that in general terms the typical farm apparently increased most in value from 1910 to 1920, and decreased about in proportion to all farms in the following decade, making a net increase from 1910 to 1920 somewhat greater than the average of all

[17] In 1910 the average value per acre of farms under 20 acres in size in 1910 was $148.55, and in 1930 the average value per acre of farms under 20 acres in size in 1930 was $275.38, or an 85 percent increase. The farms included in a given size group at one census period are not necessarily identical to those in the same-size group at another census period, since buying and selling occurs more or less continually, and farms may be combined or divided.

farms. More specifically, the average-sized farm in the United States has varied from 138 acres in 1910 to 157 acres in 1930. The census-size group containing these averages is the group of farms from 100 to 174 acres in size. The average value per acre in this group doubled between 1910 and 1920 and declined 30 percent from 1920 to 1930, making a net increase of 41 percent during the two decades, in contrast to an average increase for all farms of 23 percent.

Averages for the whole United States are highly generalized. A better, but not altogether satisfactory, unit for consideration consists of the customary geographic division. It is clear from table 10 that in practically every region great variation exists in the changes of real estate values from one size group to another. Generalization is difficult since so many differences exist between the different areas.

One statement can be made, however. Small farms appear to have fared better than the average. In every area there has been, for farms under 20 acres in size, a net increase in value per acre from 1910 to 1930. In no area has the increase for all farm land been so great as for the small farms, and in one area (the Mountain States) the average for all farms has decreased, partly by reason of the inclusion in farms of more low-grade land in the later period. In the case of the East South Central States the difference is relatively small.

In the East North Central States the increases from 1910 to 1920 were fairly uniform from one size group to another. The greatest increase occurred in the 175-to-499-acre group (the average size of all farms in this region was 105 acres in 1910), and it was this same group which subsequently declined most, and which, in 1930, stood lowest relative to the pre-war base. The group of farms slightly smaller than the average (50 to 99 acres) increased very nearly the same as the all-farm average, but declined slightly less in later years, and in 1930 stood at 21 percent above the pre-war base.

In the West North Central States, where the land boom appeared in a more aggravated form, farms in the 100-to-174-acre group (somewhat below the average size, which was 210 acres in 1910) increased most in average acre value from 1910 to 1920, and the average for all farms of between 50 and 499 acres increased more than did the average of all farms. The greatest decline in value from 1920 to 1930 was in the 175-to-499-acre group, but in 1930 the average value per acre for all farms less than 500 acres in size was further above the 1910 level than the average for all farms. The value per acre of very large farms (1,000 acres and over) averaged lower than in 1910, and that of the small farms considerably higher. There were more farms of 1,000 acres or more in size in 1930 than in 1920, in part as a result of the expansion of wheat growing in the Great Plains area.

In the Southern States, the greatest increases in value per acre occurred in the case of farms less than 50 acres in size—somewhat smaller than the average for all farms. The subsequent decline in values appears to have affected the very small and very large farms least severely.

Thus, if the very small farms are excepted, there appears to have been a tendency in the North Central States for the size groups which increased most in the boom years, to decrease most in the readjustment period. It can hardly be said, however, that these groups fell lower, relative to the 1910 level, than the groups which experienced smaller increases.

Another aspect of the problem may be raised. How does the safety of an investment in high-priced land compare with that of low-priced land?

The practical importance of this question is indicated by the study of the lending operations of the Federal Land Bank of Springfield (*5*), which showed that a larger proportion of the loans made on land with a low appraised value per acre were foreclosed than on land appraised at a high value. Moreover, the net loss on farms acquired by foreclosure and sale was lower per $1,000 loaned, on farms with a relatively high appraised value per acre. This situation was attributed in part to a tendency to overvalue the poorer land. It is, of course, impossible to generalize upon the basis of a local study, but it is clear that the question is of sufficient importance to merit careful investigation.

In this regard, table 11, based on the census, affords certain comparisons. Counties were classified on the basis of value per acre of farm real estate in 1910. The average value for each county for later years was compared with the value in 1910, and the relative changes for individual counties were averaged by 1910-value groups for States and geographic divisions. In this tabulation it was necessary to reject counties whose boundaries were changed during the 20-year period covered by the table.

TABLE 11.—*Value per acre of farm real estate: Relative change for specified periods, by value per acre, 1910[1], for the United States and groups of States*

Value per acre, land and buildings, 1910	United States				New England States				Middle Atlantic States				East North Central States				West North Central States			
	Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change		
		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30
	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent
Under $10	234	113	4	114													14	117	−14	88
$10 to $24.99	1,100	108	−11	88	22	49	4	53	11	45	34	74	60	74	−11	53	140	73	−19	37
$25 to $49.99	800	83	−15	47	20	42	30	84	60	34	18	54	124	63	−15	34	170	60	−30	15
$50 to $74.99	378	85	−23	34	5	40	47	108	35	35	11	52	80	63	−27	17	147	116	−41	26
$75 to $99.99	206	85	−28	29	4	56	61	141	8	36	15	55	57	68	−33	8	78	118	−40	29
$100 to $124.99	119	87	−24	35	1	53	52	135	7	31	46	83	46	75	−32	20	80	118	−42	29
$125 to $149.99	43	75	−30	18	3	43	51	115	2	27	1	28	23	79	−43	0	10	117	−35	22
$150 to $199.99	30	56	−4	50	2	47	26	86	8	18	98	176	16	90	−46	−8	3	52	30	84
$200 and over	28	8	106	121	1	−20	63	30	11	12	124	159	8	26	82	131	1	−27	26	−6
All groups	2,927	92	−14	58	57	44	26	80	148	38	27	88	436	91	−26	23	611	99	−32	28

Value per acre, land and buildings, 1910	South Atlantic States				East South Central States				West South Central States				Mountain States				Pacific States			
	Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change			Counties	Average change		
		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30		1910-20	1920-30	1910-30
	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent	Number	Per cent	Per cent	Per cent
Under $10	44	156	5	167	45	113	3	113	96	113	18	135	26	61	−55	−8	1	30	−41	−14
$10 to $24.99	202	136	−16	91	213	97	−4	85	245	122	−1	98	97	52	−36	−1	34	58	−12	45
$25 to $49.99	138	119	−6	80	73	131	−21	56	96	99	−14	61	56	39	−31	−10	45	69	−8	52
$50 to $74.99	29	71	10	74	21	122	−30	44	17	104	−26	43	14	18	−26	−10	21	71	−1	67
$75 to $99.99	7	63	30	85	5	103	−31	36	1	−56	−143	4	7	66	−13	37	13	74	13	97
$100 to $124.99	3	26	93	130	2	96	−12	84					2	37	13	38	6	43	15	67
$125 to $149.99					1	126	−16	91					2	−17	−30	−41	2	29	−11	15
$150 to $199.99	1	21	−32	−19									1	−57	−32	−70	2	108	66	262
$200 and over	1	−28	148	79					1	−15	266	212	1	−36	4	−35	6	9	80	96
All groups	513	128	−8	90	360	108	−11	79	456	114	0	94	206	41	−31	−4	130	62	0	65

[1] Counties the borders of which have been changed during the period 1910-30 have been excluded from this table.

The summary for the United States indicates that, with the exception of the few counties in which farm real estate was valued at over $150 per acre in 1910, the lower valued lands have increased more, relative to their 1910 value, than have the higher valued. Thus, in the 224 counties where real estate was valued at less than $10 per acre, values have a little more than doubled during the 20 years (that is, have increased by 114 percent, making them 214 percent of their initial value), whereas, for higher valued lands the relative increases were progressively less (with one exception). However, a 100-percent increase on $10 land is only $10, whereas a 30 percent increase on $100 land is $30, or three times as great. Hence, although the lands with lower initial value increased the most relatively, the absolute increases were in general greater for the medium and higher priced lands.

The 25 counties reporting values of $200 or more per acre in 1910 were so located that they cannot be considered as reflecting predominantly the effects of agricultural factors. All but 1 of the 25 counties either contained sizable cities or constituted the outlying parts of a large metropolitan area. For purposes of the present discussion, this group can be ruled out as not representative of typical agricultural conditions.

Considerable variation is evident from one size group to another, and from one area to another. In several of the geographic divisions, as for the United States as a whole, the lowest valued real estate has increased more in value relatively than have the other groups. Land valued at less than $10 per acre in 1910 frequently was land in a low stage of development. The addition of improvements, together with the fact that an increase of only a few dollars constituted a large percentage increase when the base is less than $10, probably explains such increases in large measure.

Excepting the extreme high- and low-value groups, there appears to have been a tendency in some areas, and with exceptions, for the groups which experienced the greatest relative increases from 1910 to 1920 to fall the most from 1920 to 1930.

In the East North Central States, for example, farms valued at $125 to $200 per acre increased more in value than most other groups, fell further on the average, and ended the 20-year period considerably lower relative to 1910, than was the case with the other groups.

In the West North Central States the $50-to-$125-per-acre farms, as a rule, increased more, subsequently declined further, and ended the 20 years lower, relative to 1910, than most of the other groups. In the South Atlantic region the $10-to-$75-per-acre farms rose most rapidly in value. Over the 1910–30 period, however, these groups showed a smaller increase in value than did the average of all counties in these States. A somewhat similar situation is indicated in the East South Central section, but does not appear so clearly in the West South Central. In the latter group particularly, the more valuable farm land (excepting the one county in the $200-and-over group) appears to have experienced the least relative increase in value.

Variation within States supports to some extent the tentative generalizations suggested. There are, however, sufficient exceptions to indicate the necessity for a more detailed study, taking account of

changing acreage, capital improvements, and transition from a less to a more intensive usage, and vice versa.

In areas such as New England and the Western States, where circumstances may vary greatly from one locality to another, the indicated changes do not represent so well the trends in value for farms of different average value as in the more uniform areas of the Middle West. In New England the abandonment of certain areas, and the suburban developments in others complicate the nature of the inferences from table 11. In the Western States, the addition of large areas to the existing farm acreage is a complicating factor. If the new land in farms is of low quality, its inclusion in the average for any county would tend to lower the average, even though the trend for the land that was in farms at the time of the earlier enumeration may have been upward. Similarly, the introduction of irrigation into a county would ordinarily raise the county average value, even though other land in the county might have declined in value. Comparison of the averages from one period to the next, under the circumstances, would not truly reflect the trend in values on a given farm.

CHANGES IN FARM OWNERSHIP

FORCED TRANSACTIONS INCREASED MARKEDLY

As the year 1932 progressed, the problems of indebted farmers and their creditors increased. Shrinking incomes meant increased delinquencies, and these in turn resulted in more foreclosure proceedings. In many instances it has been reported that creditors have felt that under the circumstances the rights of both parties would be more nearly protected if foreclosures were not pushed, but debtors given a chance to work out. The fact that the indebted farmers themselves normally would be able to operate the farms as efficiently as the average tenant who might be secured, together with the further fact that in numerous cases if the property were forced on the market it could not be disposed of for the face of the mortgage, has probably led to this conclusion.

Despite this circumstance, forced sales were far more frequent than during the preceding year (table 12 and fig. 8). The Bureau estimates that, on an average, for the whole United States, 38.8 farms out of each 1,000 were transferred through forced sale as a result of debt during the 12-month period ended March 15, 1933. This is an increase of 37 percent over the rate of 28.4 per 1,000 for the year before.

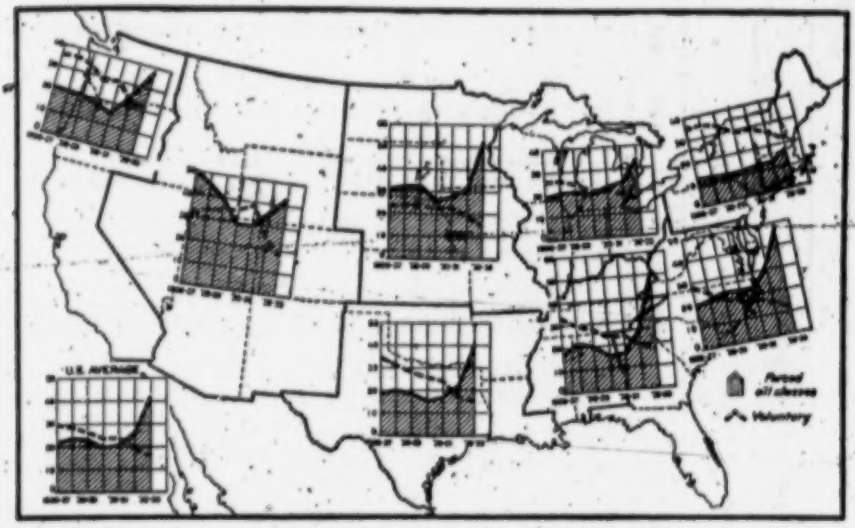

FIGURE 8.—FORCED AND VOLUNTARY SALES OF FARMS, 1926-33: NUMBER PER 1,000 FARMS, YEARS ENDED MARCH 15.

During the year 1932–33 the frequency of forced sales increased markedly in most areas. The number of voluntary sales increased slightly, principally in the South. Forced sales outnumbered voluntary sales in the United States as a whole and in every geographic division except New England.

TABLE 12.—*Number of farms changing ownership by various methods per 1,000 of all farms, by States and geographic divisions, 12 months ended Mar. 15, 1930–33*

Geographic division and State	Voluntary sales and trades[1]				Forced sales and related defaults											
					Delinquent taxes				Foreclosure of mortgages, bankruptcy, etc.[1]				Total			
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933
United States	23.7	19.0	16.2	16.8	5.1	7.4	13.3	15.3	15.7	18.7	28.4	33.8	20.8	26.1	41.7	54.1
New England	30.7	30.7	24.8	22.5	3.9	3.4	5.2	6.6	7.3	6.3	10.3	13.2	11.2	9.7	15.5	19.8
Middle Atlantic	28.3	24.5	20.4	21.0	3.5	4.6	5.6	8.7	9.8	9.2	12.4	19.6	13.1	13.8	18.0	28.3
East North Central	20.8	18.6	16.8	15.6	4.8	4.7	6.5	5.6	17.5	19.3	27.8	38.3	22.3	24.0	34.3	43.9
West North Central	22.9	18.9	14.2	13.8	4.2	5.5	8.7	10.8	23.3	23.5	43.8	61.5	27.5	31.3	52.5	72.0
South Atlantic	13.2	14.5	12.3	15.3	8.4	12.8	21.0	27.3	14.8	19.4	28.1	32.2	23.2	32.2	47.1	59.5
East South Central	23.9	19.4	17.2	18.9	4.9	10.0	26.0	27.1	11.2	15.9	24.6	36.4	16.1	25.9	50.6	63.5
West South Central	24.2	16.7	15.4	17.6	3.4	6.1	13.2	16.0	13.4	16.3	27.0	35.2	16.8	22.4	40.2	51.2
Mountain	38.7	24.6	17.6	16.8	11.2	13.8	16.5	19.2	18.2	22.6	27.0	33.6	29.4	36.4	43.5	52.8
Pacific	30.1	22.7	22.3	21.3	3.0	5.4	10.8	8.1	12.2	19.6	26.8	36.0	15.2	25.0	37.6	44.1
New England:																
Maine	29.7	31.0	21.0	21.2	7.4	4.2	9.1	12.3	9.6	10.1	14.6	17.0	17.0	14.3	23.7	30.3
New Hampshire	21.8	27.0	30.4	27.5	5.4	7.9	9.0	8.6	5.4	3.7	7.4	15.1	10.8	11.6	16.4	23.7
Vermont	37.5	34.0	32.2	27.4	1.3	3.7	1.7	2.1	8.5	6.1	9.7	15.0	9.8	9.8	11.4	17.1
Massachusetts	28.2	23.6	22.8	20.0	2.4	1.2	2.4	3.1	7.4	4.0	8.1	10.3	9.8	5.2	10.5	13.4
Rhode Island	21.0	23.0	23.6	19.5	.8	.8	1.0	1.2	2.3	2.0	4.0	3.7	3.1	2.8	5.0	4.9
Connecticut	27.2	28.9	21.9	18.7	1.0	1.0	2.2	1.8	3.2	4.5	8.9	7.1	4.2	5.5	11.1	8.9
Middle Atlantic:																
New York	30.4	28.1	24.1	24.1	5.0	4.8	7.0	11.8	11.6	11.6	12.9	21.5	16.6	16.4	19.9	33.3
New Jersey	30.6	30.6	23.5	23.5	2.2	4.5	5.0	8.6	5.4	6.4	11.0	17.0	7.6	10.9	16.0	25.6
Pennsylvania	26.0	20.1	16.4	17.6	2.3	4.4	4.4	5.8	8.4	7.4	12.2	18.2	10.7	11.8	16.6	24.0
East North Central:																
Ohio	22.7	18.3	16.6	16.0	1.8	2.4	2.9	2.2	13.5	16.4	21.6	31.9	15.2	18.8	24.5	34.1
Indiana	19.2	17.1	16.7	16.3	7.1	7.9	11.9	6.6	20.5	19.9	30.1	38.3	27.6	27.8	42.0	44.9
Illinois	18.8	17.8	14.3	13.6	3.9	3.9	4.7	6.1	17.2	20.1	29.8	44.6	21.1	23.0	34.5	50.7
Michigan	24.9	21.9	18.5	18.1	8.9	7.8	9.4	9.3	21.2	20.7	30.6	41.1	30.1	28.5	40.0	50.4
Wisconsin	18.1	18.1	17.1	14.1	2.3	3.4	4.8	4.4	16.4	20.2	28.3	36.0	19.7	23.6	33.1	40.4
West North Central:																
Minnesota	17.7	16.8	13.9	14.3	3.7	7.7	7.4	8.1	27.9	31.2	42.9	59.1	31.6	38.9	50.3	67.2
Iowa	17.6	14.3	12.8	11.8	2.2	3.3	6.3	7.4	26.1	24.8	32.5	78.3	27.3	28.1	38.8	85.7
Missouri	26.1	21.8	18.2	20.0	5.4	4.2	8.0	8.6	24.6	23.7	42.1	51.2	30.0	27.9	50.1	59.8
North Dakota	20.5	17.9	12.4	10.7	12.2	15.9	22.0	29.6	30.1	34.1	54.0	63.3	42.3	50.0	76.0	92.9
South Dakota	21.1	18.1	9.8	10.1	7.9	10.2	18.1	23.1	27.1	33.2	49.2	73.0	35.0	43.4	67.3	103.1
Nebraska	27.8	20.2	13.5	10.7	1.1	2.8	4.6	5.7	15.9	21.8	34.4	58.2	17.0	24.4	39.0	63.9
Kansas	28.0	22.1	13.8	11.6	2.6	3.4	7.1	8.4	14.8	20.0	36.0	52.7	17.4	23.4	43.1	61.1

South Atlantic:																
Delaware	24.4	19.0	19.0	14.7	1.4	3.7	1.5	5.1	5.6	10.0	14.5	19.9	7.0	13.7	16.0	25.0
Maryland	20.6	18.8	18.8	14.2	7.2	5.5	12.0	11.0	13.4	10.6	22.3	21.5	20.6	16.1	24.3	32.5
Virginia	16.3	13.7	9.8	14.6	2.6	6.7	9.5	15.3	10.4	15.2	29.3	28.0	13.0	21.9	28.8	43.3
West Virginia	21.6	18.5	15.7	18.3	12.0	19.1	22.5	49.5	7.5	9.0	12.9	17.6	19.5	27.1	45.4	67.1
North Carolina	19.1	16.5	11.0	13.5	10.8	22.3	35.6	45.8	15.0	20.0	32.6	40.8	25.8	42.3	68.2	86.6
South Carolina	14.2	9.7	11.0	13.7	15.5	17.0	25.0	21.6	25.0	22.0	28.8	28.6	40.5	49.0	53.8	60.2
Georgia	17.5	10.9	10.6	16.2	5.5	5.9	10.0	13.7	18.5	27.4	26.8	34.9	24.0	33.3	39.8	48.6
Florida	20.5	19.8	21.0	22.3	5.1	2.3	11.8	22.9	8.0	4.0	6.7	25.1	13.1	7.3	18.5	46.0
East South Central:																
Kentucky	20.0	27.2	19.0	21.0	6.4	10.3	21.9	17.0	12.6	12.1	17.9	31.0	19.0	22.4	29.6	46.0
Tennessee	18.5	16.7	18.0	19.5	2.3	3.6	10.1	14.5	9.8	10.9	23.0	34.2	11.1	14.5	33.1	46.7
Alabama	20.6	15.4	15.6	16.5	1.5	5.5	15.9	19.9	9.7	22.6	27.0	36.2	11.2	28.1	42.8	56.1
Mississippi	20.1	16.2	15.2	17.9	10.5	23.8	65.8	67.7	14.7	30.4	34.1	47.6	24.8	44.2	90.9	115.3
West South Central:																
Arkansas	27.7	19.1	19.6	23.9	4.3	8.3	27.8	27.2	16.3	18.6	32.7	36.9	20.6	26.9	60.5	64.1
Louisiana	28.8	22.5	15.5	17.8	7.6	7.4	22.3	42.6	14.2	14.4	23.5	32.8	21.8	45.8	75.4	
Oklahoma	22.9	15.3	15.4	17.6	3.4	9.8	17.2	19.6	18.2	22.4	30.5	44.7	21.6	22.2	47.7	64.3
Texas	22.0	14.7	13.6	14.8	1.8	2.9	2.3	2.3	9.6	12.8	23.6	30.5	11.4	15.7	25.9	32.8
Mountain:																
Montana	40.6	21.0	15.0	15.5	22.0	29.1	35.0	28.1	25.1	31.1	34.6	39.8	47.1	60.2	69.6	67.9
Idaho	30.4	24.6	18.4	17.5	9.8	16.7	18.1	16.9	20.9	20.8	26.2	30.1	30.7	37.5	46.3	41.0
Wyoming	42.3	29.0	22.5	14.7	13.1	10.4	14.9	18.1	17.3	20.1	26.3	23.2	30.4	30.5	41.2	41.3
Colorado	39.5	24.5	16.0	15.8	9.4	5.9	11.0	28.3	13.8	20.9	27.5	45.2	28.2	28.2	38.5	74.8
New Mexico	44.2	34.4	22.0	19.2	4.1	3.9	3.7	7.5	12.4	22.3	20.1	26.4	16.5	26.2	23.8	33.9
Arizona	41.1	31.9	22.5	18.2	1.7	7.5	8.2	7.9	19.3	23.4	32.1	26.2	21.0	22.9	40.3	34.1
Utah	27.2	14.7	13.1	12.4	10.9	16.9	14.0	15.6	8.3	16.1	17.2	21.8	19.2	33.0	31.2	37.4
Nevada	29.5	31.2	23.7	14.2	1.2	4.9	10.0	5.2	12.0	21.0	25.0	22.0	13.2	25.9	35.0	27.2
Pacific:																
Washington	29.6	25.3	18.4	18.1	5.7	9.8	12.5	10.4	13.4	18.6	24.0	34.1	19.1	28.4	36.5	44.5
Oregon	38.9	34.9	27.6	25.4	3.7	7.0	9.5	7.8	11.2	13.4	22.3	33.5	14.9	20.4	31.8	41.3
California	26.7	18.1	22.8	21.4	1.3	2.3	10.4	7.0	12.0	22.6	30.2	36.0	13.3	24.9	40.6	45.0

[1] Including contracts to purchase (but not options).
[2] Including loss of title by default of contract, sales to avoid foreclosure, and surrender of title or other transfers to avoid foreclosure.

TABLE 12.—*Number of farms changing ownership by various methods per 1,000 of all farms, by States and geographic divisions, 12 months ended Mar. 15, 1930–33*—Continued

Geographic division and State	Inheritance and gift				Administrators' and executors' sales [1]				Miscellaneous and unclassified				Total all classes			
	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933	1930	1931	1932	1933
United States	9.3	9.4	10.4	13.1	6.1	5.7	6.2	7.0	1.6	1.7	2.2	2.6	61.5	61.9	76.6	93.6
New England	10.3	8.8	10.2	11.9	6.1	5.6	6.9	7.1	1.9	1.3	2.1	2.2	60.2	56.1	80.5	83.5
Middle Atlantic	8.2	8.5	9.0	11.2	7.0	7.0	6.1	7.9	1.4	1.7	1.8	1.5	58.0	55.5	55.3	69.9
East North Central	9.4	9.3	11.0	13.3	7.8	7.5	8.1	7.6	1.3	1.8	2.2	2.3	61.6	60.9	72.4	82.7
West North Central	9.8	9.7	9.8	12.9	6.2	5.4	4.9	6.1	1.6	1.5	2.4	2.3	68.0	66.8	83.8	107.1
South Atlantic	11.4	12.5	13.3	16.7	7.9	6.5	8.1	10.2	2.0	2.6	2.6	3.2	62.7	68.3	83.4	104.9
East South Central	9.3	9.9	11.1	13.7	5.8	5.6	6.2	7.5	1.4	1.8	2.1	3.0	56.9	62.6	87.2	106.6
West South Central	7.6	7.4	8.8	11.8	3.3	3.4	4.9	4.8	1.4	1.7	2.0	2.9	58.3	51.8	71.3	88.3
Mountain	7.0	6.9	7.8	9.5	4.7	3.6	4.5	4.1	1.9	1.1	2.1	2.2	61.7	72.8	75.5	85.4
Pacific	7.3	6.6	7.5	11.2	3.6	3.6	4.3	3.9	1.4	.8	2.0	2.2	57.6	58.1	73.7	82.7
New England:																
Maine	13.0	9.4	11.2	14.8	4.5	3.5	6.8	6.8	2.3	1.4	3.2	1.6	66.5	59.8	68.9	74.7
New Hampshire	7.4	9.6	13.9	14.0	4.9	7.4	11.4	9.6	2.1	2.1	4.3	3.8	57.0	67.7	76.4	78.6
Vermont	7.7	6.7	10.1	10.1	12.0	7.5	9.0	9.6	2.0	1.0	2.4	2.8	68.0	59.0	65.1	67.0
Massachusetts	9.6	8.4	8.0	11.3	5.0	6.8	2.5	6.1	1.9	1.0	3.5	1.8	54.5	47.0	47.3	52.6
Rhode Island	7.0	5.3	4.7	7.6	2.0	3.2	4.7	5.0	.3	0	2.5	.5	43.4	34.3	40.5	37.5
Connecticut	12.0	10.7	9.0	7.5	5.6	4.6	7.9	3.9	1.3	1.4	2.4	2.4	50.2	51.1	51.6	41.4
Middle Atlantic:																
New York	8.1	9.7	9.0	13.0	5.9	5.5	4.9	6.6	1.3	1.6	1.9	1.9	62.3	61.3	59.8	78.9
New Jersey	6.2	4.6	5.0	8.8	5.7	9.3	5.0	8.3	.7	1.0	1.0	1.5	50.8	50.4	50.5	67.7
Pennsylvania	8.5	7.9	9.6	9.9	8.2	8.1	7.5	9.0	1.5	1.9	1.9	1.2	54.9	49.8	52.0	61.7
East North Central:																
Ohio	9.6	8.3	13.1	14.8	8.4	8.8	9.2	9.8	.9	2.0	1.4	1.8	56.8	56.2	64.8	76.5
Indiana	11.2	12.7	13.7	15.0	10.2	8.7	11.5	9.8	2.2	1.2	3.1	2.6	70.4	67.5	87.0	98.6
Illinois	12.7	11.0	12.4	15.7	9.6	9.7	7.4	7.5	1.0	1.0	2.5	2.0	62.2	62.5	72.1	89.5
Michigan	7.5	7.4	9.7	10.8	5.6	4.2	6.8	4.7	1.0	1.5	2.7	2.7	69.1	63.5	77.7	86.7
Wisconsin	5.5	6.8	5.4	9.1	4.6	5.1	5.1	5.5	1.8	1.9	1.6	2.5	49.7	55.5	62.3	71.6
West North Central:																
Minnesota	8.8	11.0	10.0	12.5	5.3	6.3	4.7	5.7	2.1	1.6	3.4	2.3	65.5	74.6	82.3	102.0
Iowa	9.1	8.5	12.1	13.0	7.4	6.6	6.2	6.1	1.7	1.2	2.8	2.7	63.1	58.7	92.7	119.3
Missouri	12.0	10.8	10.4	13.8	5.5	3.6	4.5	6.7	1.7	1.0	2.6	2.7	75.3	56.1	85.8	103.0
North Dakota	7.6	6.6	6.4	9.9	4.5	4.0	2.5	5.3	1.5	2.7	2.0	1.9	82.4	81.2	100.3	126.7
South Dakota	9.1	9.4	7.4	11.2	5.8	3.9	2.4	5.0	1.6	1.6	2.0	1.6	72.4	78.4	89.9	131.0
Nebraska	8.7	9.6	9.4	14.3	7.1	6.9	5.7	5.6	1.3	2.4	1.4	1.5	61.9	62.5	82.0	94.0
Kansas	10.7	10.1	9.0	13.1	7.2	6.2	4.6	6.6	1.2	1.2	1.3	2.1	62.5	63.0	71.8	94.5
South Atlantic:																
Delaware	5.0	12.5	15.2	15.8	11.8	15.5	12.4	12.9	.2	0	1.4	1.9	48.4	60.7	64.0	70.3
Maryland	11.7	9.6	10.4	12.1	10.2	6.4	8.8	11.7	2.0	3.0	2.3	2.5	65.1	53.9	74.6	73.0

Virginia	10.1	12.0	14.6	16.2	7.1	7.9	10.8	11.7	1.5	3.0	1.6	3.8	48.0	58.5	75.6	89.6
West Virginia	13.7	12.0	15.4	14.7	5.5	4.7	6.2	7.4	2.5	1.5	3.8	1.8	64.8	63.8	86.5	109.3
North Carolina	12.7	18.3	16.0	20.6	8.7	7.0	7.2	11.4	2.6	4.0	3.4	3.4	68.9	88.1	105.8	135.5
South Carolina	13.3	9.7	12.9	16.5	7.3	6.0	9.8	9.1	1.1	2.0	3.3	3.6	76.4	76.4	90.8	103.1
Georgia	10.2	9.4	9.0	15.5	9.7	7.1	6.5	9.8	2.8	2.3	2.3	3.6	64.2	63.0	65.2	92.7
Florida	6.8	8.7	9.6	12.8	4.1	1.1	5.3	6.4	.5	0	.5	2.1	45.0	36.9	54.9	89.6
East South Central:																
Kentucky	12.1	11.9	10.7	16.8	8.4	6.1	5.1	8.4	2.0	2.0	1.6	2.6	71.5	69.6	76.2	96.8
Tennessee	9.1	8.7	11.8	13.2	5.7	5.4	8.4	7.5	1.8	2.0	2.3	2.9	46.2	47.3	73.6	91.8
Alabama	6.8	9.9	12.0	12.5	3.8	5.9	3.8	6.8	.8	.9	1.2	3.2	43.2	60.2	75.4	98.1
Mississippi	8.2	8.5	9.5	11.1	4.2	5.0	7.7	6.9	.8	2.4	3.6	3.3	64.1	76.3	135.9	154.5
West South Central:																
Arkansas	7.5	7.7	7.5	10.8	3.3	4.0	4.1	5.4	1.8	2.9	2.2	3.9	60.9	60.6	93.9	108.1
Louisiana	12.7	15.0	17.2	15.4	6.7	8.0	9.9	6.7	.9	2.6	3.4	3.3	70.9	69.9	91.8	118.6
Oklahoma	5.6	7.4	7.5	9.5	2.4	3.5	4.8	5.4	.7	1.7	1.4	3.1	53.2	60.1	76.8	99.9
Texas	7.4	8.2	7.9	12.4	2.8	2.0	3.9	3.8	1.7	.9	1.8	2.3	45.3	38.4	53.1	66.1
Mountain:																
Montana	7.0	8.1	5.6	6.9	5.3	4.7	2.0	5.8	1.9	2.1	1.1	2.6	107.9	96.1	94.3	98.7
Idaho	6.1	6.8	4.4	5.6	4.0	1.6	4.9	3.4	1.7	.7	.4	1.7	72.9	71.0	74.4	72.2
Wyoming	6.4	4.4	10.7	8.8	5.2	4.5	4.7	4.4	1.4	0	3.3	3.4	85.7	68.4	82.4	72.6
Colorado	9.0	7.5	6.6	10.8	5.8	4.9	4.0	4.2	3.2	.4	3.1	2.4	85.7	63.5	68.2	110.4
New Mexico	7.3	4.9	9.3	11.7	2.0	2.2	6.2	2.2	1.8	1.6	3.8	2.6	71.8	60.3	65.1	69.6
Arizona	6.2	9.2	12.1	12.3	3.4	6.8	4.3	4.9	1.0	0	3.8	1.8	72.7	80.8	83.0	71.3
Utah	4.0	6.5	14.0	9.8	5.7	1.7	6.1	4.0	.5	1.0	1.3	1.3	56.6	57.8	65.7	64.9
Nevada	7.0	6.8	10.8	8.8	2.8	6.8	3.9	3.0	1.2	0	1.5	1.5	53.7	70.7	74.9	54.7
Pacific:																
Washington	6.2	7.9	8.1	10.9	4.0	4.3	3.3	3.4	2.2	1.1	2.5	2.4	61.2	67.0	68.8	79.3
Oregon	9.0	7.1	8.6	11.6	3.6	3.1	4.2	3.9	.6	.9	1.0	1.8	67.0	66.4	73.2	84.0
California	7.1	5.7	6.7	11.1	3.3	3.5	4.8	4.1	1.3	.6	2.2	2.3	51.7	49.8	76.6	83.9

[1] Including all other sales in settlement of estates.

In some areas the number of distress sales far exceeded the United States average. In the Middle West particularly, they were numerous, for that is the region in which the mortgage debt is most concentrated and in which prices of farm products have been particularly unsatisfactory. The highest rate of forced sales, other than tax sales, was found in Iowa, where the estimated rate was 78.3 farms per 1,000, as compared with 52.5 for the previous year. Judgments in farm-mortgage foreclosure in 15 Iowa counties during the first 11 months of 1932 were 67 percent greater than during the entire year of 1931, the totals for the 2 periods having been $11,070,851 and $6,616,201, respectively (*11*). South Dakota, with a rate of 78 farms per 1,000 as compared with 49.2 the previous year, North Dakota with 63.3 as compared with 54, Minnesota with 59.1 against 42.9, and Nebraska with 58.2 in comparison with 34.4 the previous year, were not far behind.

Considered by geographic divisions the highest average forced-sale rate, 61.5 per 1,000 farms, was reported for the West North Central States, in comparison with 43.8 per 1,000 farms for the previous year. The lowest average rate was reported from New England, with 13.2 per 1,000 farms, and the next lowest was a rate of 19.6 per 1,000 farms, in the Middle Atlantic States. These compare with 10.3 and 12.4, respectively, for the previous year.

Averages for other geographic divisions ranged from 32.2 per 1,000 farms for the South Atlantic States to 38.3 for the East North Central, all, however, representing considerable increases over the previous year. The higher rate in the West North Central States is due in part to the greater concentration of mortgage indebtedness in that region. If the figures cited, which are relative to all farms, are adjusted on the basis of percentage of farms mortgaged, the result is an estimate of the number of forced sales per 1,000 mortgaged farms. The rates per 1,000 mortgaged farms [18] for the year ended March 15, 1933, are as follows: New England, 30.3; Middle Atlantic States, 48.6; East North Central States, 83.6; West North Central States, 112.4; South Atlantic States, 119.3; East South Central States, 117.0; West South Central States, 87.3; Mountain States, 70.4; and Pacific States, 69.5; and the United States average, 92.4.

The extent to which the total quantity of land held by loan agencies has been increased as a result of foreclosures during the year is not known. Some sales, as noted later, have been occurring, but the addition to total land held is a net figure, after allowing for sale of foreclosed property and for redemption by the original owner. It may be mentioned that the book value of real estate owned outright by the Federal land banks [19] (*20*) increased 61.8 percent from March 31, 1932, to March 31, 1933, as compared with an increase of 39.1 percent during the preceding year. The corresponding increase (*17*, *20*) from June 30, 1932, to June 30, 1933, was 52.6 percent.

[18] Adjusted on the basis of percentage of farms reported mortgaged by the 1930 census, the latest available data.

[19] [U.S. TREASURY DEPARTMENT, FEDERAL FARM LOAN BOARD.] FEDERAL LAND BANKS. CONSOLIDATED STATEMENT MAR. 31, 1933. . . . 43 pp. [Mimeographed.]

In Iowa an investigation [20] reported that corporate holdings of land in 54 counties studied amounted, in the first quarter of 1933, to 1,362,929 acres, or 7.2 percent of all land in farms in these counties. Over 95 percent of this total was held by financial institutions, and the remainder was held by colleges and miscellaneous corporations.

In general, the concentration of corporate-owned land was greater in counties with low value per acre than in the counties with higher-valued land.

Of the total corporate-owned land, insurance companies held 47.8 percent, deposit banks (including closed banks) held 22.5 percent, land-investment companies held 11.7 percent, the joint-stock land banks 8.2 percent, mortgage companies 2.4 percent, and the Federal land banks held 2.3 percent. Holdings of insurance companies are not out of proportion to the volume of their mortgage loans.

The avalanche of foreclosures brought cooperation among farmers in efforts to protect what they believed to be their interests, and at the turn of the year a wide variety of methods were being tried.

In Iowa a procedure was suggested by which the creditor and debtor might agree upon a sliding scale of interest payments, based upon an index number of prices of farm products.[21] This plan, in its essence, recognized one of the fundamental situations involved in long-time financing—that neither party to the contract knows whether the sum of money to be paid back will have the same, a greater, or a lower value in terms of what it will buy than the sum of money borrowed. If, for example, a man lends $1,000 he foregoes the ability to command in the market certain quantities of goods, which of course, constitute the real things which can be consumed or used in further production. If, during the period of the loan, the general price level doubles, the sum of money paid back at the maturity of the loan will command only half as much, measured in goods, as the money loaned. The borrower is able to discharge his debt with half the quantity of goods, which, in essence, were loaned him.

If, on the other hand, the price level declines 50 percent during the period of the loan, the sum of money returned will command twice as much, measured in goods, as that loaned. The borrower must repay, in essence, twice as much goods as he borrowed. Interest in either case consists of a percentage of the face of the loan. In the first case, one party loses; in the second, the other loses.

The plan mentioned above recognizes this situation as a fundamental problem in long-term financing, and attempts to resolve it in such a manner that, at least so far as interest is concerned, the payment for the use of funds shall be such as to give neither borrower nor lender a substantial advantage through changes in price levels. Application of the method to interest alone does not, of course, provide a remedy so far as principal is concerned.

In some cases where foreclosure proceedings have been instituted, counsel for the debtor is reported to have requested that "instead of the court ordering immediate foreclosure, it should render equity and justice to the debtors by continuing the cases to such time as farm

[20] MURRAY, W. B. and BENTLEY, R. C. CORPORATE-OWNED LAND IN IOWA. A PRELIMINARY REPORT. Iowa Agr. Expt. Sta., 23 pp., illus. July 1933. [Mimeographed.]

[21] See footnote 10, p. 16.

prices more nearly balance with the time at which the mortgage was made", and Supreme Court opinions have been cited as a basis for a court in equity's refusing an action that would result in "peculiar hardship, unconscionable advantage and oppression" (*1*).

In other cases sales were prevented, at least temporarily, by means of force. The frequent mention of such cases in the daily press evidenced the growing concern of farmers for their neighbors who were foreclosed upon. The possibility of deficiency judgments, especially, appears to have given rise to much apprehension.

Another development during the period has been the "98-cent sale", in which property was bid in at merely nominal figures, and afterward often turned back to the former owners. This procedure soon met with legal obstacles, at least one judge having announced that he would refuse to confirm future real estate foreclosures unless the property brought an amount sufficient to cover the mortgage, and the attorney general of Nebraska, according to the press, having said that "courts would declare void sales at which crowds of farmers, seeking to protect neighbors from dispossession, thwart foreclosure by 'penny' bids."

In Wisconsin, according to the press, two judges in one district announced that where no defense had been made, decrees of foreclosure would not be issued, nor would foreclosure sales be confirmed.

Concurrently with these developments, tension was increasing and in several States led to gubernatorial proclamations having for their purpose the restriction of foreclosure actions. The announcement by the New York Times on January 31 and February 1, 1933, that leading life insurance companies had decided to suspend foreclosure proceedings temporarily, except in most extreme cases, appeared to help relieve the tension that had been developing under the feverish attempts toward liquidation.

Another phase of the situation was the growing pressure upon legislative bodies for relief. A wide range of proposals were brought forward, including moratoria, refinancing plans, the empowering of courts to continue foreclosure suits, the placing of restrictions upon deficiency judgments, the levy of a tax upon foreclosures, the extension of the period of redemption, and the providing of committees to assist debtors and creditors in reaching compromise agreements.

In some States laws were passed, embodying various proposals. For example in Wisconsin [2] and South Dakota, legislation provided for extending the redemption period 1 year under certain conditions. Also in Wisconsin new legislation concerning mediation or arbitration of mortgage disputes before court action and affecting deficiency judgments was added to the statutes. In Iowa, new legislation granted to courts the authority to grant continuance of foreclosure actions until March 1, 1935, and makes such continuance mandatory unless good cause for different action is shown.

Newly enacted legislation in Nebraska provided a 2-year moratorium on real estate mortgage foreclosures, but within a month after the enactment a court held that the law impaired the obligation of a contract and was therefore unconstitutional.

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[2] DUNCAN, L. O., OLCOTT, M. T., and CARPENTER, M. P. STATE MEASURES FOR THE RELIEF OF AGRICULTURAL INDEBTEDNESS IN THE UNITED STATES, 1932 AND 1933. U.S. Dept. Agr., Bur. Agr. Econ. Agr. Econ. Bibliog. no. 45, 64 pp. 1933. [Mimeographed.]

Governors of several States, seeking to relieve the growing tension, issued proclamations forbidding foreclosures or requesting a cessation of such action. In some cases the proclamations were for limited periods or until legislation could be passed.

Federal interest in the farm-debt situation was evidenced by the subscription in 1932 of $125,000,000 additional capital to the land banks, and again by the enactment of an important piece of legislation dealing with the farm-debt problem. This law (Pub. Doc. no. 420, 72d Cong.) provided facilities whereby farmers may obtain a hearing of their indebtedness problems for the purpose of enabling them to carry on operations even though temporarily unable to meet their obligations (*22*).

Other legislation of far-reaching import became law on May 12, 1933, and provided for further Federal assistance in agricultural financing under a consolidated Farm Credit Administration.[23]

REGIONAL INVESTIGATIONS PROVIDE FORECLOSURE DATA FOR EARLIER YEARS

The Bureau's data on changes in farm ownership are not available for periods before the year ended March 15, 1926, and therefore do not provide a basis for comparing the present with earlier distress periods, as, for example, that of the 1890's.

Recent investigations in several States (*6*, *7*, *9*, *10*, *11*, *21*) make possible a limited comparison with earlier years. Figure 9 presents these data, reduced to the basis of number of farms foreclosed per 1,000 of all farms, for comparison.

The data for this chart are based primarily upon tabulations made from official sources, principally the records of the county recorders' offices.

In Minnesota, the available data (*6*) relate to four counties—Polk in the northwestern, Stearns in the central, Lincoln in the southwestern, and Mower in the southeastern part of the State. The data apply to farms sold at sheriff's sale in these counties, and were obtained from county records. They do not necessarily include all farms lost to owners on indebtedness, for, as indicated by studies elsewhere, many farmers have simply deeded their farms to creditors without the foreclosure procedure.

The Ohio (*21*) data relate to three counties in western Ohio, which are regarded as fairly typical of the section—Putnam, in the northwestern part of the State, Union, a little west of the center, and Greene, in the southwest. Data apply to property sold at foreclosure. Similar data for property foreclosed by financial institutions alone, together with information as to number of farms and acreage voluntarily assigned to such institutions, were also secured.

Information for Brookings County, S.Dak. (*7*), which is on the eastern border of the State, approximately midway between the northern and southern boundaries, applies to the period 1881 through 1932. For 1881–1930 data were compiled from private abstract books, and for 1931 and 1932 from records of the office of the register of deeds. Data for 44 (out of a State total of 69) counties

[23] A useful pamphlet, Farm Mortgage Loans by the Federal Land Banks and the Land Bank Commissioner (*18*), has been issued by the Farm Credit Administration and may be had upon application to the Farm Credit Administration, Washington, D.C.

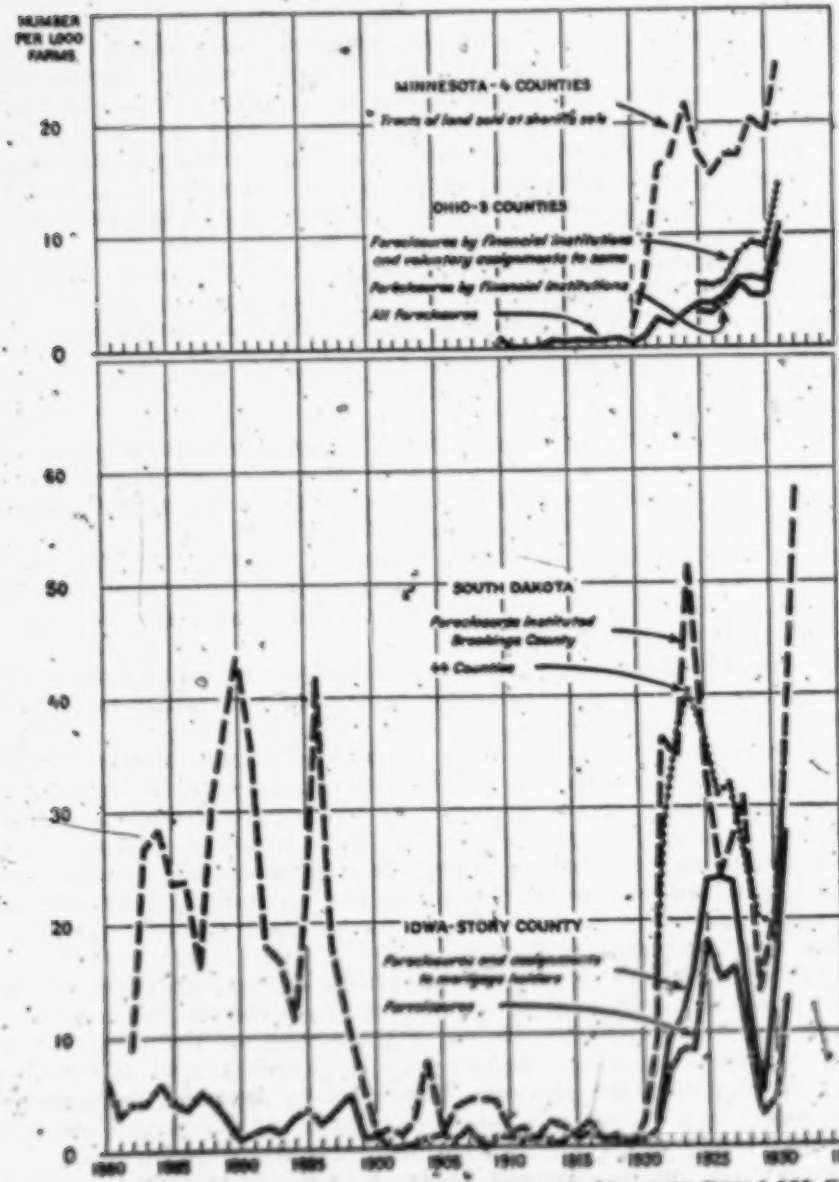

FIGURE 9.—FORCED SALES OF FARM REAL ESTATE: NUMBER PER 1,000 FARMS IN SELECTED COUNTIES OF FOUR STATES.

Foreclosures of mortgages were relatively infrequent from 1900 to 1920, but in the years since 1920 a large number of farms have been lost to their owners. In South Dakota approximately 1 out of 3 farms has been involved in foreclosure since 1920, and in Story County, Iowa, 1 out of 6 farms has either been foreclosed or assigned since 1920 (assuming that individual farms have not been involved in more than one foreclosure and that each foreclosure represents a whole farm).

from 1921–31 were compiled from records of the register of deeds (Brookings County is included as 1 of the 44 counties). For the years 1921–30, data from the two sources are available for Brookings County. In most years compilations from private abstract books showed a slightly higher number of foreclosures, although the trends in both cases are essentially similar.

Story County, Iowa, is located practically at the center of the State, and is typical of the level central and northwestern sections of Iowa with high land values. The average value per acre of farm real estate in 1930 in Story County was $154, and the State average was $124. Information on number of foreclosures is available from 1854 (the county was organized in 1853) through 1931 (*9*). The first foreclosures occurred in 1857, 4 years after the first mortgage was recorded.

Figure 9 portrays the tremendous increase in foreclosures that has occurred since 1920. Although only three series are available prior to 1920, and only two prior to 1910, these latter two, Story County, Iowa, and Brookings County, S.Dak., indicate that during the whole period 1900 to 1920, foreclosures were relatively few, in several years amounting to only 1 or 2 per county. In 1904, a year of low wheat yields in South Dakota, there were 13 foreclosures in Brookings County. In the three Ohio counties there were very few foreclosures from 1910 to 1920.

Prior to 1900 in Brookings County, and prior to 1880 in Story County, the number of foreclosures per 1,000 farms was large. During these earlier periods, however, the counties were being settled, the number of farms was smaller than in recent years, and conditions were considerably different from those of a settled and more mature community. The fact that the years of numerous foreclosures differed so greatly between Iowa and South Dakota in the earlier periods, whereas in recent years the rates have been high in both, suggests that the less stable conditions of a community in process of being settled may be responsible in part for the high rates in South Dakota in the 1880's and 1890's, and in Iowa for certain years prior to 1880. For this reason the foreclosure rates of these pioneer periods are not altogether comparable with those of the present. With the passing of 1900, both sections were pretty well through the pioneer stage, and the data are more nearly comparable.

The sharp rise in distress transfers of farm real estate since 1920 is ample proof of the intensity of the readjustments that have been forced as accompaniments of the drastic changes in price levels and other adjustments of the period. It will be observed that the first peak of foreclosures was reached in certain of these areas in 1924 and 1925, and that in Iowa and South Dakota there was a downward trend till 1929 and 1930, when the number of foreclosures shot upward again. In the four counties of Minnesota the low point was reached in 1926 and was followed by a renewed upward trend. The available Ohio data, however, indicate a continuous upward trend in distress sales after 1920. Except for Brookings County, S. Dak., data for 1932 were not available from these sources. That year was shown in table 12 to be one in which there were further increases in the rate of foreclosures. The same tendency for Brookings County is evident from the chart.

The real import of these data is more clearly evident if the cumulative number of foreclosures over a period of years is considered. In Story County, for example (assuming that individual farms have not been involved in more than one foreclosure and that each foreclosure represents a whole farm rather than only a part of a farm), at least 1 out of 6 farms, on an average, has been foreclosed or voluntarily assigned since 1920; in the 44 counties of South Dakota nearly 1 out of 3 farms, on an average, has been foreclosed since 1920; in the 4 Minnesota counties the proportion of farms sold at sheriffs' sales was approximately 1 out of 5 farms; but in the 3 Ohio counties the ratio of foreclosures was much lower—only 1 out of 17.

In connection with these comparisons it may be noted again that the Story County data include assignments as well as foreclosures, whereas the Brookings County data include only foreclosures instituted. In Minnesota the data relate to farms sold at sheriff's sales. In Ohio the data apply to all foreclosures in the three counties. These differences should be noted with respect to the comparisons outlined above.

Another significant characteristic of the forced-sale situation is the change in proportions of actual foreclosures as compared with voluntary assignments. In 1925 (*21*), for the three Ohio counties of Putnam, Greene, and Union, there were, in all, 24 foreclosures by financial institutions and 19 voluntary assignments; foreclosures thus constituted over half the total. Foreclosures continued more numerous than assignments until 1929, when there were 33 foreclosures and 35 assignments. In 1931, the number of foreclosures jumped again, reaching 69, as compared with 36 assignments.

In Story County, foreclosures and assignments maintained a reasonably stable relationship to each other in the earlier years of the depression (*9*), foreclosures usually numbering 2 or 3 to each voluntary assignment. In recent years the ratio appears to have changed. The year 1929, for example, saw 6 foreclosures and 5 assignments, 1930 saw 10 foreclosures and 26 assignments, and 1931 saw 30 of the former and 35 of the latter, indicating an increase in the relative frequency of the assignment in recent years.

Further evidence of the increasing frequency of the assignment, at least in some parts of Iowa, is found in a classification of forced sales in 13 townships of Iowa, covering the years 1928 to 1932 (*10*). In 1928 total forced sales for the 13 townships amounted to $431,474, of which $261,482 represented foreclosure, $74,992 represented cancelation by foreclosure of prior lien, and $95,000 represented assignment to mortgage holder. In 1929 the total of forced sales was $265,643, but the combined amount foreclosed and canceled by foreclosure of prior lien declined approximately one half, whereas assignments increased about one seventh. The following year saw a further decrease in foreclosures and a doubling of assignments, resulting in a considerable increase in the total forced sales. The following 2 years saw an increase in all items, the total forced sales in 1932 having amounted to $959,135, of which $77,094 was canceled by foreclosure of prior lien, $454,841 was foreclosure, and $427,200 was assignment. Thus in these 13 townships, assignments grew in fre-

quency, accounting in 1928 for 22 percent of total forced sales and in 1932 for 45 percent.

Still another interesting development from this Iowa study (*10*) consists of the changes in the last 15 years in the methods of payment of mortgage loans. In the 13 townships included in the study, the average amount of mortgage loans repaid from 1915 to 1920, inclusive, was slightly over $1,250,000, of which 52 percent was paid by renewal, 27 percent through sale of the property, 21 percent by miscellaneous methods, and an insignificant amount through foreclosure.

In the 1920's the total loans paid increased somewhat, in 1923 amounting to $2,500,000, but in recent years it has declined, and in 1931 amounted to only $1,500,000. The average for the period 1926–31 was about $1,800,000.

The amount of renewals also increased in the early 1920's, and decreased later, averaging 44 percent of all debt payments over 1926–31 and only 17.5 percent in the first 10½ months of 1932. Payments through sale were lower after 1920 than during the several years preceding, and fell off rapidly after 1925, averaging only 4 percent of all payments over the period 1926 to 1931. Some improvement occurred in 1932 in this item, judging by the period January 1 to October 15, for which data were reported.

The proportion of loans paid by means of foreclosure, however, increased rapidly. From only $800 in 1918, loans paid in this manner increased to $909,064 in 1926, then declined to $265,643 in 1929, and again climbed to $959,135 for the first 9½ months of 1932. The proportion of loans paid by foreclosure averaged 30 percent for the 6 years 1926–31, and was 67 percent for the first 9½ months of 1932. These figures illustrate literally the report from correspondents that renewals have been getting increasingly difficult to secure.

A further point developed by the Ohio study (*21*) involved the prices at which foreclosed farms were sold. From 1910–24, in the 3 counties studied, in only 3 years did the total amount for which foreclosed farms were sold fail to exceed the amount of the judgments against the property. Since then the situation has been reversed. In each later year for which data are available (to September 1932) the total realized by the sale of foreclosed property has been considerably less than the total judgments. In fact, for the 367 farms involving 40,809 acres, which were foreclosed during these 7¾ years (1925 through September 1932) the total amount for which these properties were sold lacked a little over a half million dollars of satisfying the judgments against them; that is, the amount for which the properties were sold was 22 percent less than the amount of the judgments. This statement, pertaining to aggregate sales, does not mean that some of the individual properties may not have sold for the amount of the judgment or more.

TAX SALES INCREASED, RELIEF LEGISLATION ENACTED IN SEVERAL STATES

Tax sales, as well as foreclosure sales, increased markedly during the year ended March 15, 1933. The average rate of tax sales for the country as a whole, according to the Bureau estimates (table 12)

increased to 15.3 farms per 1,000, from the 13.3 for the preceding year.

Great variation occurred from region to region, and from State to State. The lowest average rate for any geographic division was 5.6 farms per 1,000 for the East North Central States. Individual States in the group ranged from 2.2 farms per 1,000 for Ohio to 9.3 for Michigan. The next lowest average rate for any geographic division was 6.6 per 1,000 in New England. In several States of this area, however, averages were lower than in any of the East North Central group, but high rates in two States raised the group average.

Higher frequencies of tax sales occurred in the South Atlantic and East South Central States, where division averages were 27.3 and 27.1 farms per 1,000, respectively. The West South Central and Mountain States, with respective rates of 16 and 19.2, occupied intermediate positions.

The Federal Land Bank of Wichita (*3*) states (February 1933): "Fairly complete reports from Colorado, Kansas, and Oklahoma indicate the possibility that more than 40 percent of the farms in these states were either sold for delinquent taxes last fall, or are now subject to such sale."

Interpretation of the rates of tax sales is rendered more uncertain by reason of legislation in a considerable number of States affecting tax-collection laws in several ways.

In North Dakota [24], for example, the right of the county to take a tax title was suspended until March 1, 1935. In South Dakota the law was changed, easing the payment of taxes, and penalties were modified. In Kansas, a new law provided that tax land bid in by the county may be redeemed without penalty before 1934, and without interest before September 1933. These laws were enacted in the first quarter of 1933.

Kentucky extended the time for payment from March 1 to March 31, and West Virginia and South Carolina liberalized somewhat the regulations concerning payment of taxes.

These are suggestive of the manner [25] in which legislatures have attempted to ease the incidence of property taxes. Most such measures apparently are based upon the expectation that incomes will eventually become adequate to meet these charges, provided the penalties are not exorbitant. It is probable that in many cases the effects of such legislation will be more evident in the figures for next year than for the one just passed.

FREQUENCY OF VOLUNTARY SALES INCREASED SLIGHTLY

The rate of voluntary sales for the country as a whole (which each year since 1926, with one exception, has been lower than the preceding year) showed a slight upturn for the year ended March 15, 1933, when the average rate was 16.8 farms per 1,000, in contrast to the 16.2 the preceding year. Four of the geographic divisions likewise averaged higher than a year ago, the Middle Atlantic, South Atlantic, East South Central, and West South Central. Average rates in the others were lower than the preceding year.

[24] See reference in footnote 22, p. 48.
[25] A more complete list is contained in the reference cited in footnote 22, p. 48.

The highest average rates were in the New England, the Middle Atlantic, and the Pacific States, the respective averages being 22.5, 21.0, and 21.3 sales per 1,000 farms. The lowest average rate was 13.8, in the West North Central States.

Of the individual States, in 21 the average voluntary sale rate was higher than a year ago, in 25 it was lower, and in 2 there was no change. Of the increases, 1 each occurred in the New England and Middle Atlantic States, 3 in the West North Central, 6 in the South Atlantic, 8 in the South Central, and 2 in the Mountain States. Of the decreases, 5 occurred in New England, 5 in the East North Central, 4 in the West North Central, 2 in the South Atlantic, 6 in the Mountain, and 3 in the Pacific States.

Complete data concerning the sellers of such farms are not available. There has been a definite tendency in recent years, however, for owners who have not had to sell to hold their farms rather than sell under the extremely unfavorable market conditions. Furthermore, the lack of opportunity in cities has discouraged the normal farm-to-city movement. Various of the land banks, as reported in statements to the daily press and in the Sixteenth Annual Report of the Federal Farm Loan Board (*19, p. 14*) have increased their sales. In 1930 the number of farms [26] sold by the 12 banks was 2,736, in 1931 it was 3,441, and in 1932 it was 4,886, an increase of 42 percent from 1931 to 1932.

The joint-stock land banks [26], too, have increased their sales during the last year. In 1931 the joint-stock land banks not in receivership sold 1,504 farms, and in 1932 the same banks sold 3,388, an increase of 125 percent.

The number of units sold by these two groups combined has increased approximately 69 percent from 1931 to 1932. Exact data concerning the extent to which other holders of distress land have increased their sales are not available, although the tendency appears more or less general to "clear the decks" of the poorer farms, but to retain the better properties, and to maintain them in good physical condition in the anticipation of eventually selling them under more propitious conditions than have prevailed for the past few years. It would appear, therefore, that increases in the number of voluntary sales consist to a considerable extent of increases in the sales of previously foreclosed farms rather than in the reestablishment of a normal market.

It may be pointed out in connection with the sale of foreclosed farms that the 3,643 farms [27] sold in 1931 by the Federal land banks were carried on the books of the banks at an investment of $12,530,415. The total consideration received for their sale was $10,040,247, or 19.9 percent less than the investment. The 5,092 farms sold in 1932 were carried on the books at an investment of

[26] These are the totals of (1) "lands owned outright disposed of (whole units)", (2) "parts of farms disposed of", (3) "sheriffs' certificates, judgments, etc., sold or redeemed", (4) less "sales canceled", as reported in tables 28 and 29 of the sixteenth annual report and tables 30 and 31 of the fifteenth annual report of the Federal Farm Loan Board.

[27] These figures refer only to "lands owned outright disposed of (whole units)." See tables 28 and 29, sixteenth annual report (*19*). Parts of farms were sold in addition, and there were sheriffs' certificates, judgments, etc., which were sold or redeemed. There were also some cancelations, some of which may have been of the "lands owned outright disposed of (whole units)."

$17,277,757, and the consideration received in their sale was $12,468,240, or 27.8 percent less than the investment. Similarly, the consideration received by the joint-stock land banks for farms sold in 1931 was 27.2 percent less than the investment as carried on the books, and in 1932 it was 34.5 percent less.

Little is known concerning the circumstances involved in individual foreclosures, except for general statements of policy, such as that from the sixteenth annual report (*19, p. 13*) of the Federal Farm Loan Board.

> The Farm Loan Board is advised that it is not the policy of the banks to institute foreclosure proceedings except for the protection of the banks when borrowers have abandoned their farms or when, after careful investigation of the merits of individual cases, it is found that the borrowers are not making satisfactory efforts to meet their obligations or have no chance to succeed if given further time. In a large proportion of the cases in which foreclosure proceedings have been instituted the action was taken upon the recommendation of the local national farm loan associations, composed of farmer-borrowers, through which the loans were obtained and which endorsed and became liable for the loans.

It frequently happens that borrowers allow taxes to become delinquent. Under the circumstances of tax delinquency, the mortgage holder is faced with the necessity of taking some action to protect his interests, and if there is doubt concerning the mortgagee, foreclosure affords the normal method of securing a more adequate control of such income as may be produced by the farm. It has also been necessary in some cases for holders of first mortgages to protect their interests from holders of junior liens, or from unsecured creditors.

It is probable that the farms sold at such losses are for the most part the more undesirable farms, either naturally, or as a result of careless or inefficient management. In the case of such properties, immediate sale, even at a loss, may be the most economical way out.

In any event, the large differences between investment and consideration received, when viewed in retrospect, suggest that as a general consideration careful attention in the future might well be given to the advisability of compromising with the debtor in cases which, if forced into foreclosure, might involve even greater losses to both parties concerned. Recently enacted legislation [28] should facilitate adjustment in such cases. Drastic changes in the purchasing power of the dollar, measured in terms of what it will buy, as have been involved in the changing price level from 1929 to 1933, are beyond the control and hence the responsibility of individual debtors and creditors. When such changes occur the essential problem consists in the development of the most economical workable solution which shall give equitable consideration to the rights of both parties, as well as to the public interest.

The total number of transfers of ownership appears to have increased during the last 2 years (table 12), but the principal trends in the relative frequency of different types of transfers have continued (table 13). Voluntary sales, which, in 1927, 1928, and 1929, represented about two fifths of all transactions, have dropped to less than one fifth; and all forced sales, which, in the earlier period,

[28] See page 63 and reference (22).

represented only about one third of the transfers, have increased to over one half. Little change has occurred on the whole in the proportion of inheritance and gift transfers. A slight downward trend seems to exist in the proportion of administrators' and executors' sales.

TABLE 13.—*Changes in farm ownership: Relative frequency in percentage of total transfers, 1927–33*

Geographic division	Voluntary sales and trades								All forced sales							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	51.5	54.4	52.2	51.0	54.7	41.0	35.4	48.6	19.7	16.7	18.7	18.6	17.3	25.6	31.2	21.1
Middle Atlantic	54.6	52.6	49.8	48.8	44.1	36.9	30.0	45.3	17.4	18.4	21.2	22.6	26.9	33.5	40.6	25.4
East North Central	38.8	37.5	36.8	33.8	30.5	23.2	18.8	31.3	30.7	33.4	33.8	36.2	39.4	47.4	53.1	39.0
West North Central	33.7	32.9	34.6	33.7	28.3	16.9	12.9	27.6	44.2	44.6	46.0	49.4	48.9	62.7	67.2	49.5
South Atlantic	37.8	31.8	30.4	29.0	21.2	14.8	14.6	25.7	33.7	37.0	39.8	47.2	56.5	58.7	63.6	43.6
East South Central	42.7	42.7	43.6	42.3	31.0	19.7	17.7	34.2	31.6	31.1	28.3	36.8	41.4	58.0	59.6	39.8
West South Central	48.7	46.8	48.6	45.4	32.4	21.6	19.9	37.6	31.1	31.0	28.9	31.8	43.4	56.4	58.0	40.0
Mountain	36.8	40.8	46.7	47.4	34.1	23.3	19.7	33.5	49.5	46.1	43.3	46.0	50.0	67.0	61.8	48.5
Pacific	52.8	51.1	49.2	52.3	38.0	30.3	25.8	42.8	29.3	30.6	30.8	36.4	43.0	51.0	53.3	37.6
United States	41.3	39.8	40.5	38.6	30.7	21.1	17.9	32.8	34.0	34.5	33.6	33.8	42.2	54.4	57.8	41.5

Geographic division	Inheritance and gift								Administrators' and executors' sales							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	15.8	16.2	16.5	17.1	15.7	16.9	18.7	16.7	11.9	11.1	11.2	10.1	10.0	11.4	11.2	11.0
Middle Atlantic	13.0	13.4	14.2	14.1	16.3	16.3	16.0	14.6	12.8	12.8	12.7	12.1	12.6	11.0	11.3	12.2
East North Central	14.7	15.2	15.6	15.2	15.2	15.2	16.1	15.3	13.7	13.0	11.8	12.7	12.3	11.2	9.2	12.0
West North Central	11.2	11.5	13.3	14.4	14.5	11.7	12.0	12.7	9.0	8.9	9.5	9.1	8.1	5.8	5.7	8.0
South Atlantic	16.0	16.9	17.3	18.2	18.3	16.9	15.9	16.9	12.0	12.0	12.4	12.6	9.5	9.7	9.7	11.2
East South Central	13.6	14.3	16.4	16.4	15.8	12.8	12.9	14.6	10.9	10.2	10.0	10.3	8.9	7.1	7.0	9.3
West South Central	12.2	13.1	13.7	14.3	14.3	12.3	13.4	13.3	8.9	7.1	8.9	8.2	6.6	6.9	5.4	8.0
Mountain	6.4	6.6	7.9	8.6	9.5	10.3	11.1	8.6	4.8	4.3	5.4	5.7	4.9	6.0	4.8	5.1
Pacific	10.1	10.6	11.3	12.7	11.4	10.2	12.5	11.4	5.8	6.6	6.4	6.2	6.2	5.8	4.7	6.0
United States	12.9	13.5	14.7	15.1	15.2	13.5	14.0	14.1	10.2	10.2	9.3	9.9	9.2	8.1	7.5	9.2

Geographic division	Miscellaneous and unidentified							
	1927	1928	1929	1930	1931	1932	1933	Average 1927–33
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	1.1	1.6	1.4	2.2	2.8	3.1	3.8	2.6
Middle Atlantic	2.3	2.6	2.1	2.4	2.1	2.3	2.2	2.4
East North Central	2.1	1.9	2.3	2.1	2.5	2.0	2.8	2.4
West North Central	1.5	2.1	1.6	2.4	2.3	2.9	2.7	2.3
South Atlantic	1.4	1.7	1.6	2.2	2.5	2.1	2.1	2.0
East South Central	1.3	1.7	1.7	2.5	2.9	2.6	2.8	2.2
West South Central	1.1	2.0	1.6	2.6	2.3	2.6	2.3	2.4
Mountain	2.5	2.2	1.6	2.2	1.5	2.5	2.6	2.2
Pacific	2.0	2.1	2.6	2.4	1.4	2.7	2.7	2.3
United States	1.6	2.0	1.9	2.6	2.7	2.9	2.8	2.4

Certain regional characteristics with respect to relative frequencies have been retained. In the North Atlantic and Pacific States, voluntary sales have accounted for a larger share of transactions than in other sections, during the last year as well as previously. Forced sales have been somewhat less frequent, relatively, in the North Atlantic States than elsewhere.

FARMER BANKRUPTCIES WERE MORE NUMEROUS

The fiscal year ended June 30, 1932, is the first year since 1925 during which the total number of farmer bankruptcies has failed to decline. The peak of farmer bankruptcies was reached in 1925, when 7,872 cases were concluded in the courts. For the country as a whole, the number steadily declined to 4,023 for the year ended June 30, 1931. The next year, the last for which data are available, however, saw a 21 percent increase, bringing the total for the year ended June 30, 1932, to 4,849 (table 14).

TABLE 14.—*Farm bankruptcies: Cases concluded in fiscal years ended June 30, 1925–32*

Geographic division and State	Number								Percentage of all bankruptcy cases							
	1925	1926	1927	1928	1929	1930	1931	1932	1925	1926	1927	1928	1929	1930	1931	1932
United States	7,872	7,099	6,360	5,794	4,944	4,023	4,849		7.8	7.5	7.1	6.7	6.1	6.1	7.7	
New England	189	145	108	162	145	141	164	186	5.2	4.6	3.1	3.5	3.2	2.8	2.3	3.8
Middle Atlantic	193	224	234	274	270	305	353	372	2.6	3.4	3.1	3.5	3.2	3.6	3.6	3.8
East North Central	760	844	719	874	980	973	1,035	1,580	13.4	11.2	9.2	9.3	8.8	8.0	8.1	10.7
West North Central	2,899	2,813	2,404	1,729	1,471	1,267	1,010	1,009	39.2	38.4	36.3	34.2	31.2	31.2	27.9	20.8
South Atlantic [1]	1,037	747	565	605	515	491	484	487	17.6	12.7	10.0	9.9	7.9	8.9	8.8	8.7
East South Central	517	579	615	521	382	338	338	311	9.7	9.5	9.7	6.9	4.5	3.8	3.6	3.2
West South Central	630	704	567	581	464	375	392	309	23.6	25.6	20.7	19.5	17.3	14.7	10.8	10.2
Mountain	1,671	1,142	909	420	235	203	201	215	41.6	42.7	31.8	24.0	20.9	17.1	13.3	15.2
Pacific	880	511	449	458	387	326	256	311	14.6	11.9	10.6	8.5	6.7	4.8	4.4	5.0
New England:																
Maine	103	101	51	77	60	66	62	80	11.8	11.9	6.3	9.2	8.3	7.9	7.1	10.1
New Hampshire	8	7	7	7	6	5	1	9	5.8	5.8	5.7	6.4	4.4	4.3	1.2	6.9
Vermont	30	17	21	29	28	32	21	32	12.0	8.6	10.8	14.9	13.3	14.6	10.0	17.6
Massachusetts	7	13	10	18	25	22	15	23	.8	.8	.6	.7	1.0	.8	.6	1.2
Rhode Island	2	0	2	0	2	0	1	1	1.6	0	1.6	0	1.1	0	.8	.4
Connecticut	13	8	14	31	14	16	4	12	2.2	1.7	2.6	3.7	2.1	2.2	.7	1.6
Middle Atlantic:																
New York	104	122	145	152	149	172	198	193	1.9	2.8	2.6	2.7	2.7	3.2	3.1	3.1
New Jersey	16	23	16	12	18	12	18	21	2.2	4.1	1.9	2.1	1.7	1.2	1.4	1.8
Pennsylvania	73	80	63	110	103	121	137	158	5.6	5.8	4.6	6.3	5.5	5.8	5.4	6.9
East North Central:																
Ohio	214	199	137	157	231	270	277	460	11.8	8.7	5.7	5.6	6.4	5.7	5.6	8.9
Indiana	97	112	78	114	139	144	149	208	9.3	9.3	5.8	4.3	9.5	9.7	9.5	10.3
Illinois	190	234	257	276	419	364	369	614	11.9	9.0	8.7	11.9	10.9	9.1	11.5	13.2
Michigan	46	60	34	41	30	29	31	47	3.3	3.4	4.3	3.4	2.2	2.6	1.9	2.1
Wisconsin	213	239	213	186	204	166	209	251	20.2	19.0	16.8	14.9	13.0	7.9	11.6	15.2
West North Central:																
Minnesota	399	419	394	299	193	159	116	114	28.3	30.2	41.6	32.2	9.6	10.2	7.4	9.9
Iowa	661	701	656	534	430	325	326	426	30.4	43.4	34.1	24.1	22.7	9.3	6.7	24.5
Missouri	397	361	314	265	231	214	181	229	19.4	19.7	17.9	16.4	14.1	9.1	11.3	13.7
North Dakota	430	396	276	135	267	196	108	55	76.1	79.8	59.6	39.9	79.1	59.8	47.1	29.9
South Dakota	313	309	223	259	166	114	93	93	63.3	59.0	47.8	29.0	64.2	44.3	36.8	34.3
Nebraska	178	286	181	185	157	149	197	97	38.3	39.6	29.6	23.3	23.0	21.7	28.3	18.9
Kansas	313	190	231	114	97	109	79	96	21.8	23.4	17.2	9.4	8.4	9.5	11.4	12.8
South Atlantic:																
Delaware	6	5	4	10	5	7	15	19	20.0	9.1	6.3	13.2	6.5	9.3	4.2	4.4
Maryland	35	34	35	49	49	49	42	31	21.7	17.7	13.1	17.5	13.2	9.3	13.4	8.1
Virginia	96	111	97	102	98	120	102	117	6.8	6.6	5.2	5.5	4.6	4.1	4.6	4.6
West Virginia	19	18	15	25	41	30	30	26	4.6	2.1	2.4	3.1	4.2	1.6	3.2	2.4
North Carolina	42	37	30	28	28	29	34	47	14.6	11.4	9.3	9.0	7.9	7.4	9.6	7.6
South Carolina	26	52	47	45	34	26	22	29	11.2	19.2	16.8	15.5	9.4	7.0	9.2	13.5
Georgia	799	467	337	304	249	216	177	142	28.3	21.3	7.8	6.9	6.6	7.1	8.8	6.1
Florida	9	16	9	13	13	11	11	26	4.2	6.6	3.9	5.2	5.1	4.9	4.9	4.9

[1] Includes the District of Columbia. For the whole period only 1 farm bankruptcy in the District of Columbia has been reported, that 1 being for the year ending June 30, 1926.

TABLE 14.—*Farm bankruptcies: Cases concluded in fiscal years ended June 30, 1925–32*

Geographic division and State	Number								Percentage of all bankruptcy cases							
	1925	1926	1927	1928	1929	1930	1931	1932	1925	1926	1927	1928	1929	1930	1931	1932
East South Central:																
Kentucky	109	117	164	191	131	122	99	103	15.8	11.4	13.6	10.9	7.0	6.4	5.4	6.2
Tennessee	109	134	101	102	118	82	101	89	5.9	6.5	4.7	4.3	4.6	2.7	3.1	2.7
Alabama	242	266	318	211	88	117	126	94	10.8	11.0	12.2	8.6	3.2	3.6	3.0	2.3
Mississippi	58	33	32	17	19	14	13	25	10.7	8.9	7.6	2.1	4.9	2.6	2.8	3.9
West South Central:																
Arkansas	85	101	94	89	83	94	37	53	25.1	22.5	22.6	23.5	17.7	20.4	11.5	12.7
Louisiana	77	159	119	93	85	85	74	52	21.2	28.6	25.3	19.3	18.6	15.6	10.6	10.0
Oklahoma	145	170	145	106	66	55	34	64	15.7	20.1	18.5	13.2	8.8	7.4	4.6	6.4
Texas	343	334	209	271	251	141	137	139	30.4	27.5	19.5	22.8	23.9	17.6	14.7	12.6
Mountain:																
Montana	460	634	245	126	131	104	66	59	65.4	59.2	45.7	36.4	34.6	31.0	21.3	21.1
Idaho	260	222	161	101	76	39	41	45	55.6	51.5	47.8	35.6	30.6	24.2	23.0	25.8
Wyoming	45	38	31	44	17	12	3	18	33.6	22.5	27.2	29.7	25.0	21.1	8.2	16.3
Colorado	220	143	90	63	50	49	53	58	32.1	29.9	22.5	16.3	11.7	11.3	11.6	13.7
New Mexico	27	50	22	27	26	6	7	4	28.4	36.5	32.8	27.6	31.0	8.2	12.7	7.1
Arizona	19	29	30	23	7	6	7	9	30.6	34.5	26.3	20.7	11.1	10.2	9.9	12.0
Utah	32	33	26	34	24	36	22	21	8.4	9.2	8.0	8.9	8.4	10.6	8.9	8.1
Nevada	5	2	4	2	1	8	2	1	20.8	15.4	18.2	11.1	4.2	12.1	3.8	3.0
Pacific:																
Washington	199	182	160	144	107	90	100	92	23.8	19.1	14.6	12.6	7.4	5.1	6.7	7.8
Oregon	100	109	72	67	83	50	42	63	10.8	10.0	6.9	5.5	6.5	2.9	3.5	5.1
California	293	220	236	242	197	195	113	185	12.8	9.5	8.9	8.2	5.4	5.1	3.4	4.2

Division of Agricultural Finance, compiled from annual reports of the Attorney General.

The upward tendency was quite general, all but one of the geographic divisions—the East South Central—having reported more than for the year before. Increases were reported in 31 States, decreases in 16, and 1 State—Rhode Island—reported only one farmer bankruptcy, the same as the previous year.

The number of bankruptcies last year was equivalent to 1 bankruptcy for every 1,297 farmers, as compared with 1 bankruptcy for every 1,563 farmers for the year before, and for every 809 farmers in 1925. Inasmuch as these figures relate to bankruptcies concluded in the courts for the fiscal year ended June 30, 1932, they probably reflect to a considerable extent the reduced incomes of the 1930 or 1931 crop year rather than later years. It will be recalled that income from farm production in 1931 was about 27 percent less than that of 1930 and that income for 1932 was about 26 percent less than in 1931.

The greatest number of farmer bankruptcies occurred in the East North Central States, where 1,580, as compared with 1,025 for the previous year, were reported. In the West North Central States there were 1,099, which was only 89 more than in the preceding year. Of the individual States, Illinois reported the greatest number, 614, with Ohio and Iowa following with 460 and 465, respectively. Rhode Island and Nevada each reported only 1.

Farmer bankruptcies accounted for 7.7 percent of all bankruptcies. This compares with 6.7 percent the previous year, which was the lowest of the continually decreasing series since 1924, when 18.7 percent of all bankrupts were farmers. In the West North Central States, 20.5 percent of all bankrupts of the year were farmers, South Dakota and Iowa leading the list with 45.3 and 45.0 percent, respectively. The proportion of all bankrupts who were farmers increased in 33 States, decreased in 14, and remained constant in 1.

LARGER SHARE OF VOLUNTARY SALES TO NONFARMERS AND NONLOCAL RESIDENTS

Of the farms involved in voluntary sales and trades consummated during the year, the greater numbers were bought by local buyers (table 15). Seventy-six percent of the buyers at bona-fide sales reported by dealer correspondents lived in the same county or the county adjoining that in which the farm was located. The proportion of purchases by local buyers has been declining consistently during 4 of the 6 years of the available record, having changed in all from 84 percent in 1928 and 1929 to 76 percent in 1933. This trend appears to be associated with the city-to-farm migration on the part of unemployed.

TABLE 15.—*Voluntary sales and trades of farm real estate: Percentages of purchases reported in specified classes of residence, occupation, and purpose of purchase, for the United States and for geographic divisions, 12 months ended March 15, 1928–33*

Geographic division	Local residence						Purchase for operation					
	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	61	57	59	46	51	50	82	85	90	70	85	85
Middle Atlantic	75	77	70	70	69	66	83	85	83	83	83	83
East North Central	85	86	83	84	78	76	83	83	80	82	77	75
West North Central	86	86	80	88	85	81	85	84	85	81	76	74
South Atlantic	80	82	82	82	79	76	81	81	78	80	78	78
East South Central	87	87	90	85	87	86	86	82	79	79	81	80
West South Central	81	80	83	77	73	76	76	76	73	70	68	68
Mountain	81	80	81	77	76	77	91	91	87	86	87	88
Pacific	73	72	71	72	66	70	87	91	84	90	86	88
United States	84	84	82	81	77	76	84	83	81	81	79	77

Geographic division	Occupation of purchaser																	
	Active farmer						Retired farmer						Other occupation					
	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933	1928	1929	1930	1931	1932	1933
	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.	Pct.
New England	64	62	59	42	37	40	3	2	3	6	7	7	33	36	38	52	56	53
Middle Atlantic	62	67	58	50	45	43	5	4	4	7	5	5	33	29	41	43	50	53
East North Central	74	73	67	60	55	48	5	6	6	7	7	7	21	21	27	33	38	45
West North Central	83	82	81	75	67	59	6	5	5	8	8	9	11	13	14	17	25	33
South Atlantic	75	74	66	62	55	54	2	3	3	5	4	4	23	23	30	33	41	42
East South Central	78	78	74	69	65	66	3	2	2	3	4	3	19	20	23	28	31	31
West South Central	78	75	70	64	58	49	6	3	4	6	5	6	20	22	26	30	43	46
Mountain	91	91	85	78	67	68	1	1	2	4	5	2	8	8	15	20	28	30
Pacific	76	82	71	65	51	52	4	2	4	4	6	6	20	16	26	31	43	42
United States	77	78	73	68	57	53	5	4	4	6	6	6	18	18	24	29	37	41

The lowest proportion of local buyers, 50 percent, is reported in New England. In all other geographic divisions, two thirds or more of the buyers were local, indicating the preponderant, even though declining, importance of the local buyer.

Under normal conditions the majority of farm sales are made to persons who, prior to buying, have been closely associated with farming. Young men aspiring to ownership, farmers expanding their farms or investing surplus funds, and others who, for various rea-

sons, shift from one farm to another in attempting to better their condition, provide the principal demand for farms under normal circumstances. Indicative of this situation are the data of table 15. In 1928 and 1929 three fourths or more of the purchasers at voluntary sales were active farmers. In more recent years this class of buyers has become relatively less important, although in most regions, even for the year ended March 15, 1933, a larger share of the farms sold voluntarily were sold to active farmers than to any other one group. Declining farm incomes on the one hand and the increasing shift from city to farm as a result of industrial inactivity are largely responsible for the increasing share of purchases by persons from nonfarming occupations. In the industrial States of the Northeast, buyers from nonfarming occupations have predominated, having bought a considerably larger share of the farms than in the less-industrialized sections.

The predominant purpose in buying farms appears to be to engage in farming rather than to speculate or to rent to other persons. This tendency appears most pronounced in the Northeast and far West. In the former section it is not clear to what extent the expectation is to farm permanently and to what extent it is a temporary arrangement, or an attempt to provide a supplemental income through part-time farming. Similarly in the Central States it is not clear how far the decreasing proportion of buyers who plan to operate their farms indicates a tendency for investors or speculators to take advantage of what they believe to be bargains.

Complete information is not available as to the principal class of buyers at forced sales. Such evidence as is available indicates that in a majority of cases the property continues to be bid in by the mortgage holder.

One indication is provided by the experience of the Federal land banks. Out of 3,350 [29] (*8*, *19*) foreclosures completed in 1929 the Federal land banks bought in 3,072 [30] or 91.7 percent. Out of 4,637 [29] foreclosures completed in 1930, the banks bought in 4,483 [30], or 97.6 percent, and in the first 11 months of 1931, out of 6,826 [29] foreclosures completed, 6,558 [30] or 96.1 percent were bought in. In the case of the joint-stock land banks, the proportion of completed foreclosures bought in was practically the same as in the case of the Federal land banks.

FARM-MORTGAGE CREDIT CONDITIONS [31]

Farm-credit conditions during the year under consideration have been characterized by continued difficulties in repayment of credits previously obtained and by the smallest volume of new credit extended in many years. Low farm incomes in many cases have prevented payment of current interest and maturing payments on principal necessary to maintain loans in good standing. Loans with expiring terms have encountered pressure for reduction as a condition of renewal, in order to bring outstanding obligations within manageable limits for borrowers and within the requirements of law

[29] Includes farms deeded directly to the banks by borrowers.
[30] Includes farms bought by banks subject to redemption by the borrowers and farms deeded directly to the banks by borrowers.
[31] Prepared by the Division of Agricultural Finance.

and safety for creditors. In pursuit of this policy, lending agencies generally have included in new and renewed loan contracts, provision for payments on principal during the life of the loan.

Despite these efforts, it has not been possible to reduce debts as rapidly as farm values have declined, and the lag in debt adjustment incident to the shrinkage of more than one third in farm values during the 3 years 1930–33 has increased the number and proportion of mortgaged farms having high ratios of debt in relation to the new values. A widespread tendency among creditors toward postponement of payments and of leniency toward borrowers has not prevented an increased number of cases of forced liquidation following the rise in delinquency and the disappearance of equities, as evidenced by foreclosure, forced sale of property, or voluntary surrender of title.

New advances of funds on farm real estate security continued to decline throughout 1932 and the first half of 1933. The investments of 25 leading life insurance companies averaged approximately $600,000 per week during the first 8 months of 1933 as compared with an average of $900,000 in 1932, $2,000,000 during 1931, and $3,000,000 during the years 1928–30. New loans constituted less than 10 percent of the total loan contracts written by mortgage bankers during 1932.

The net result of small advances of new credit on the extinguishment of debt by taking over the security and through payment has been a continued reduction in the volume of outstanding farm loans of all lending agencies. Mortgages held by life insurance companies decreased more rapidly during the first 7 months of 1933 than during any 7 months of 1932, the decline during 1932 having exceeded the total reduction during the 4 previous years, 1928–31. At the same time, resale of acquired properties has represented only a fraction of the number of farms taken over on account of debt, with the result that credit arising from purchase money mortgages has been much less than that extinguished by acquiring land. A further result of this situation has been the continued net outward flow of capital from agriculture, with no reversal of this fundamental trend as yet evident.

In the field of short-term farm credit, the year was featured by banking difficulties and the use of emergency credit in larger proportions than in any previous year. The closing of many rural banks during the concluding period of 1932 and the early months of 1933 was followed by the bank holiday of March, which left more than 3,000 banks, mostly in the rural districts, closed or operating under restrictions. These difficulties stimulated the creation and expanded activity of Government-sponsored credit agencies. Outstanding advances of the regional agricultural credit corporations, intermediate credit banks, and crop-production loan offices amounted to $375,000,000 in August 1933.

The adverse trend of credit in agriculture during the past year has occurred despite generally favorable rates prevailing in central money markets with the exception of the early months of 1933 incident to the banking holiday. Very low rates have prevailed generally on short-term liquid credits, and yields on long-term bonds have declined slowly. Commercial-paper rates averaged 1.92 per-

cent for the first 8 months of 1933 as compared with 2.73 percent for 1932. Discount rates of Federal reserve banks have continued at extremely low levels, the New York rate having been 2½ percent during the summer of 1933. Average yields of United States Treasury issues have steadily declined from 4.27 percent in January 1932, to 3.38 percent in July 1933, averaging 3.46 percent for the first 8 months of 1933 as compared with 3.74 percent for 1932. Yields on Federal land bank bonds approached 6 percent in April 1933, but declined to 5 percent in August, averaging 5.41 percent for the first 8 months of 1933 as compared with 5.59 percent for 1932.

Federal land bank rates to borrowers averaged 5.58 percent for the 12 banks during most of 1932 and 1933. Contract rates on new loans by all banks were reduced to 5 percent in July 1933, though by provision of the Emergency Farm Mortgage Act the rates payable by farmers on outstanding loans made through the national farm loan associations and on new association loans made during the 2 years following May 12 are reduced to 4½ percent for the 5-year period begining July 11, 1933.

The year witnessed the enactment of a number of measures aimed at relieving debt distress and improving credit facilities. Acts of various State legislatures directed toward securing a stay of foreclosures for farmers temporarily unable to meet their obligations have restricted the number of formal court actions instituted to take possession of property. In several States voluntary local committees were formed to assist distressed borrowers in reaching such agreement with creditors as seemed calculated to assure mutual protection and fair treatment of all interests. An amendment to the National Bankruptcy Act approved March 3, provided for the appointment of debt conciliation commissioners by the Federal district courts, upon petition of 15 farmers from a given county. After prescribed hearings the court may approve any composition or extension of agricultural indebtedness agreed to by creditors representing a majority in number and amount. Legal proceedings against property may not be taken while cases are under consideration or during the life of the agreement. Secured creditors including lenders on real estate are not disturbed in their claims save with respect to the time and method of collection. The new law has been used extensively in adjusting debt difficulties in some areas, its facilities having been used by several hundred Utah farmers, for example.

The Federal Government enacted comprehensive measures relating to both long- and short-term credit. The Emergency Farm Mortgage Act in addition to reducing interest rates temporarily on loans by the Federal land banks waived all payments on principal for the 5 years following July 11, 1933, and authorized direct loans to farmers where national farm-loan associations do not provide accommodation. Authorization was given for the issuance of $2,000,000,000 of 4-percent bonds guaranteed as to interest by the Federal Government, such bonds to be offered in exchange for mortgages or sold to obtain proceeds for making new loans. Provision for second-mortgage loans not exceeding $5,000 each and bearing 5 percent interest was authorized from a fund of $200,000,000 made available by the Reconstruction Finance Corporation for cases of debt settle-

ment in which the total obligations of the borrower do not exceed 75 percent of the value of the farm property.

The Farm Credit Act of 1933 authorized the creation of regional credit corporations to be established in each of the 12 Federal land bank districts to assist in organizing and financing of local production-credit associations. Twelve banks for cooperatives are to be similarly established for the purpose of financing farmers' cooperative associations in the respective districts, while a central bank for cooperatives is to function in Washington for cooperatives operating on a national scale.

FARM REAL ESTATE TAXES[*]

Farm real estate taxes per acre reached their highest point for the country as a whole in 1929. For that year, according to revised data recently analyzed by the Department of Agriculture, the average tax per acre stood at 241 percent of the 1913 figure. Corresponding figures for 1930, 1931, and 1932 were 238, 218, and 189 percent. Thus a slight decrease from 1929 to 1930 was followed by a larger decrease in each of the later years. The 1931–32 change was 13 percent, and the total 1929–32 change was 22 percent.

In a great majority of cases these taxes are levied during the year named and are payable at about the end of that year or early in the next. They should be compared with land values for March 1 of the following year. The 22-percent decline in taxes from 1929 to 1932 compares with a 36.5-percent decline in land values. By 1932 severe distress was forcing substantial tax decreases. Yet average taxes payable near the end of 1932 had decreased from those of a year earlier by 13 percent, as compared with an 18-percent decrease in land values.

These tax changes both from 1929 to 1932 and from 1931 to 1932 were very unevenly distributed. In 2 States the tax per acre actually averaged higher in 1932 than in 1929, and in 2 States it stood at the same figure for the 2 years. Both increases were in New England. The greatest percentage decreases for the 3-year period were about 35 percent, in Florida and Indiana. Indexes of tax per acre in 1929, 1931, and 1932 and the changes between 1931 and 1932 are given by geographical divisions in table 16.

[*] Prepared by the Division of Agricultural Finance.

TABLE 16.—*Farm real estate taxes: Index of tax per acre and tax per hundred dollars of value, 1929, 1931, and 1932*

Geographic division	Index of tax per acre, 1913–100				Tax per $100 of value			
	1929	1931	1932	Change in the index 1931–32	1929	1931	1932	Change 1931–32
	Percent	*Percent*	*Percent*	*Points*	*Dollars*	*Dollars*	*Dollars*	*Dollars*
New England	249	253	242	−11	1.53	1.70	1.78	+0.08
Middle Atlantic	246	248	234	−14	1.51	1.69	1.84	+.15
East North Central	244	211	172	−39	1.51	1.73	1.67	−.06
West North Central	254	230	196	−34	1.08	1.31	1.36	+.05
South Atlantic	350	309	280	−29	1.07	1.25	1.36	+.11
East South Central	316	299	269	−30	1.22	1.51	1.66	+.15
West South Central	256	239	199	−40	.93	1.19	1.21	+.02
Mountain	203	184	173	−11	1.26	1.44	1.65	+.21
Pacific	259	235	208	−27	1.06	1.16	1.26	+.10
United States	241	218	189	−29	1.19	1.42	1.50	+.08

Taxes per acre indicate the actual amounts of taxes that farmers have had to pay on their real estate, and the actual amounts, therefore, have exerted immediate influence upon farm real estate values. In a more fundamental though less direct way the effect of taxes upon value depends upon the "burden" of the taxes. The latter relates the tax paid to the "true value" or "full value" of the property taxed. For any given year the burdensomeness is somewhat more closely related to income, but insofar as value is a proper capitalization of income, the ratio of taxes to value is an appropriate measure of burden, and changes in the ratio should indicate the changes in this burden. Table 16 shows, by geographic divisions, farm real estate taxes per hundred dollars of value in 1929, 1931, and 1932 and changes between 1931 and 1932.

Unlike tax per acre, tax per hundred dollars of value has continued to increase. While tax per acre decreased 22 percent from 1929 to 1932, tax per hundred dollars increased 26 percent. Between 1931 and 1932 tax per acre decreased 13 percent, and tax per hundred dollars increased more than 5 percent.

In one sense this increase in tax per hundred dollars is due to the failure of assessments to decrease as much as did land values. In many farming communities, on the other hand, further decrease in assessments would have brought only higher rates and no great change in tax levies. The difficulty lay deeper than assessments. Until total revenues required from the property tax could be reduced, a uniform decrease in assessments would fail to give relief. Relief in this sense has recently been attained to a significant degree, but not sufficiently to equal the decreases in farm income and farmland values. The continued increase in tax per hundred dollars means that, owing to the decrease in land values for other reasons, taxes have become an increasingly depressing influence upon these values.

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U. S. GOVERNMENT PRINTING OFFICE: 1933

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In The

District Court of the United States

NORTHERN DISTRICT OF INDIANA

Hammond Division

IN RE EDWARD CYR,
Debtor

Cause No. 2167

ORAL ARGUMENT FOR THE DEBTOR ON THE VALIDITY OF THE FRAZIER-LEMKE AMENDMENT

MAY IT PLEASE THE COURT:

It would be difficult to conceive of a matter more important to the agricultural community than this which is now before the court. This case involves the ability of a substantial percentage of the farmers to maintain a roof over their heads, and to have an opportunity to perhaps acquire in the future, something more than a mere subsistence. It is the only obstacle that remains between them and peonage. This is no exaggeration, because it can hardly be gainsaid that a farmer who has acquired, lived on, and operated his own property for a number of years, and who has a large family, as most farmers have, if compelled to abandon his home soil where he and perhaps his family for generations have taken root, and work out as a hired hand for

$20.00 a month (the current wage), is in a worse position even than a peon. Usually the latter has neither financial responsibilities, nor a sense of responsibility. And hence no worry nor ambition.*

The right to acquire and keep a home, and bear the responsibilities therewith connected, is the principal distinguishing characteristic between a freeman and the so-called peasant—an unknown class in this country. From the earliest date of recorded history, through the conquest by the Romans, to the present, the badge of a freeman has been the right to hold real estate. Deprive any substantial portion of the population of this country, of this opportunity, and you undermine its very foundation. It is because there is a distinct menace of this, that the Congress has exercised its power under section 8 of the Constitution, and passed the Frazier-Lemke Amendment to section 75, of the Bankruptcy Act, which gives to the farmer the right, with the consent of his creditors, to purchase his farm, or if he cannot obtain the creditors' consent, then allows him to retain the possession of his farm for five years at a reasonable rental, with an option to purchase.

THE FRAZIER-LEMKE AMENDMENT

Although it is true that at least one court has remarked upon the "crudity" of the Amendment, yet I very earnestly deny that such is the case. To me it is classic in its simplicity, with the exception of three words in one paragraph. And it is certainly direct in

* A prominent tourist returning from South America, relates the following incident. He saw a gentleman of brown hued skin, reclining in the shade of a banana tree, and asked him if he would take his parcels to his hotel. Upon being courteously refused the free-born American said to his South American brother, "If you will carry these packages to the hotel, I will gladly give you a dollar." "But Senor," the putative porter replied, "I already have a dollar."

its effect. The trouble with those who criticize it, is, either that they are not students of bankruptcy law and procedure, or that they do not take the trouble to properly familiarize themselves with it.

It must be remembered that the Frazier-Lemke Amendment is merely sub-section (s) of section 75 of the National Bankruptcy Act, and that it is governed in all cases where the procedure is not specifically defined, by the practice in bankruptcy as defined by the Act itself, and the General Orders of the Supreme Court. General Order L in fact, specifically points this out.

The Frazier-Lemke Amendment is very simple. As stated, it is merely an amendment to section 75, but for the purpose of the argument here, it can be considered as distinct, in and of itself, because it is entirely distinct from sections (a) to (r). These sections provide for a new form of procedure, known as conciliation proceedings, but I am informed that there has been no case in this district in which a "conciliation" has been effected. Counsel herein have a large number of cases, and has never been able to effect a composition or extension. As shown heretofore, some Frazier-Lemke petitions have been filed in this court by him, because differences of only $30.00 or $40.00 have existed in compositions affecting as much as $13,000.00. It might be said that it must have been bad business for the debtor not to have stretched the additional small amount. But the answer is, how far can you stretch a broken string?

I trust the court will excuse me if I refer to the provisions of this section rather colloquially. It provides:

(s) That any farmer who fails to make the lion and the lamb lie down together, or who feels aggrieved by his failure to do so, may amend his petition and ask to be adjudged a bankrupt.

At the time of the first hearing, he petitions that all of his property, whether pledged, encumbered, or unencumbered by liens "or otherwise" be appraised, his exemptions set out to him, and that he be "allowed to retain possession of any part of parcel, or all of the remainder of his property" and pay for the same under the terms and conditions set forth in this Amendment.

(1). Upon his request at the time of the first hearing, appraisers are appointed. His property is to be appraised at "its then fair and reasonable value, not necessarily the market value at the time of such appraisal." The appraisal is to be made "in all other respects" with right of "objections, exceptions, and appeal" in accordance with the Bankruptcy Act. Except that in case of real estate the objections, exceptions, and appeals may be made within one year from the date of the order approving the appraisal.

(2). After the value of the property has been fixed by the appraisal, the debtor's exemptions are set aside to him, subject to any liens upon the same, and the court may then "order that the possession, under the control of the court, of any part or parcel or all of the remainder of the debtor's property, shall remain in the debtor subject to a general lien, as security for the payment of the value thereof." And it is provided that such a lien is to be subject to and inferior to all prior liens, pledges, or encumbrances, and that such prior liens shall remain in effect upon the actual value of the property, as fixed by the appraisal. The liens on livestock are to cover all increase and the liens on real estate to cover all rental or crops as security for the payment of "any sum that may be due or past due under the terms and provisions of the next para-

graph", until the full value of any such particular property has been paid.

(3). It is then provided that upon request of the debtor "with the consent of the lien holder or lien holders," the trustee, after the order is made setting aside his exemptions, shall agree to sell to the debtor any part of the remainder of the bankrupt estate at the appraised value upon the following terms and conditions and "such other conditions" as in the judgment of the trustee shall be fair and equitable, namely: Payment of 1 percent on the unpaid balance for 6 years; 2½ percent on the principal the second and third years; 5 percent on the principal the fourth and fifth years, and the balance of 85 percent the sixth year; the proceeds to be paid to the lien holders as their interests may appear, and to the trustee of the unsecured creditors, as their interests may appear.

(4). "An agreement having been reached," the debtor may consume or dispose of any part of his property, subject to the general lien, and provided he pays the appraised value of the same.

(5). In case the debtor fails to make any payments, to the secured creditors or to the trustee, then such secured creditors or the trustee may proceed to enforce their lien.

(6). Having complied with the provisions of subsection (3), the debtor may apply for his discharge.

(7). This subsection provides: "If any secured creditor of the debtor, affected thereby, shall file written objections to the manner of payments and distribution of debtor's property as herein provided for, then the court, after having set aside the debtor's exemptions as prescribed by the State law, shall stay all proceedings for a period of five years, during which five years the debtor shall retain possession of all or any part of his property, under the control of the court, provided he pays a reasonable rental annually for that part of the property of which he retains possession; the first pay-

ment of such rental to be made within six months of the date of the order staying proceedings, such rental to be distributed among the secured and unsecured creditors, as their interests may appear, under the provisions of this Act. At the end of five years, or prior thereto, the debtor may pay into court the appraised price of the property of which he retains possession: *Provided,* That upon request of any lien holder on real estate the court shall cause a reappraisal of such real estate and the debtor may then pay the reappraised price, if acceptable to the lien holder, into the court, otherwise the original appraisal price shall be paid into court and thereupon the court shall, by an order, turn over full possession and title of said property to the debtor, and he may apply for his discharge as provided for by this Act: *Provided, however,* That the provisions of this Act shall apply only to debts existing at the time this Act becomes effective.

If the debtor fails to comply with the provisions of this subsection the court may order the trustee to sell the property as provided in this Act."

SUMMARY OF THE LAW

There are only two sections of the Amendment that do not provide for a procedure without the consent of the creditors. First, subsection (s) provides that if the farmer feels aggrieved, because he can not weld the pewter handle to the wooden spoon, or mix oil and water, or make the tiger and his prey lie down together in peaceful comity, that he may file a petition asking to be adjudged a bankrupt, and that he be allowed to retain possession of his property.

Subsections (1) (2) (3) (4) and (5) are all steps taken with the consent of the creditors. There can be no constit[illegible]nal question involved here because the lien holders can make the farmer a present of all his obliga-

tions if they wish to. Subsection (6) is on the same order, because it provides that if he has complied with subsection (3), he may apply for his discharge. The only other procedure that is not taken with the consent of the creditors is the lease with the option of purchase, which he secures by subsection (7). This provides that he may retain possession of his property at a "reasonable rental" for five years. If during that period he manages through some agricultural alchemy to pay into court the appraised value of the property, he may secure his discharge. The proceedings are under the control of the court and any lien holder has a right to secure a reappraisal, and the debtor must then pay such reappraisal "if acceptable to the lien holder." It might be noted that subsection (7) provides specifically that the provision only applies to debts existing at the time the Act becomes effective, which is June 28th, 1934.

DIFFERENCES BETWEEN THE FRAZIER-LEMKE SALES AND SALES UNDER THE ORIGINAL BANKRUPTCY ACT

There is a marked difference between sales which may be made under the Frazier-Lemke Act and those which take place under the provisions of the other bankruptcy sections, and they are all to the disadvantage of the farmer, and are as follows:

(a): *The appraisal. In each case appraisals are made, but under section 70 (b) of the Bankruptcy Act, the appraised value as fixed by the court stands, and the sale is made on that basis. Under subsection (s), that is the minimum price the farmer pays. At some future time there may be a reappraisal and he may pay a higher price. If the reappraisal is lower, the lien holder has a right to make him*

pay the original appraisal. Also, under section 70 (b) of the Bankruptcy Act, the law itself recognizes that a sale at 75 percent of the appraised value is a mighty good sale, because the trustee can sell at that figure without first obtaining leave of court. As this court will take judicial notice of, there is any number of instances where sales are actually made for considerably less than 75 percent of the appraised value.

(b). *Under section 70 (b) of the Bankruptcy Act sales are made either at auction or by private sale, but in any event the trustee can solicit bids from the world in general. Under subsection (s) of section 75 the farmer can be the only purchaser if he so elects, and is able to make good. Since he pays the appraised value, there can be no possible criticism of a sale being made in this way. But the real objection is, that formerly under the Bankruptcy Act, the mortgage holder has the right to bid in the property under his lien, provided the court permitted him to do so. The court under the original Bankruptcy Act could always sell the property free and clear of liens if it so wished. But the lienholder could bid for the property and direct the bid to be applied on his lien, and therefore, since in many cases the lien was larger than a purchaser would pay at a bankrupt sale due to the fact that the lien holder had tacked on compounded interest and excessive attorney's fees, which he had not paid, he was in a position to either get the property or force a purchaser to pay him an excessive cash profit.*

AN ILLUSTRATION OF SUCH ATTORNEY'S FEES

As an illustration, let me refer the court to the case of Simon Shannon, Cause No. 2172, pending in this court. The foreclosure in that case was filed at Rensselaer by an attorney from Crawfordsville, whom it

is common knowledge, works on a monthly salary. He hired a local attorney at Rensselaer to put his name on the complaint. A decree was entered by default and a judgment and sale had by default. Waiving aside compounded 8 percent interest, which amounted to a large sum, there was taxed up $1,460.00 attorney's fee. It is common knowledge that the attorney at Rensselaer received from the insurance company from $100.00 to $150.00 in each case for the use of his name. Innumerable instances could be cited of a similar character.

Now the only question before this court, is whether these lien holders have a constitutional right to bid in the property.

Merely to state the proposition carries its own refutation. The appraisals are made under the control of the court, and they are no more subject to tampering than is any other appraisal in any other bankruptcy proceeding. The full appraised value of the property is paid, which is more than is paid in any other bankruptcy proceeding. The farmer who fought to make this country, who has made it, and who is still referred to as its backbone, is brought to the front, by being permitted to buy his property at the full appraised price. The lien holder admits that if somebody else paid the full appraised price, there could be no constitutional objection. The lien holder admits that if the property was offered at public sale and the full appraised price paid, there could be no constitutional objection. The lien holder does not question the power of the court to order the property sold free and clear of liens. But he claims that he has a constitutional right to be the only bidder for the property, because he owns the lien, and that the farmer has no such right. In

other words, if the lien holder had been given the privilege of being the exclusive bidder, he admits the law would not be objectionable. But otherwise, in the case of the actual owner of the land. The constitutional question presented therefore, is whether Congress has the lawful power under section 8 of the Constitution, to provide that a farmer may be given the option of being the exclusive purchaser of his farm, provided he pays the full appraised value for the same. Or stated another way, can Congress constitutionally permit a farmer to reorganize his business, namely, his farm, provided that by so doing he pays his secured creditors from 25 percent to 50 percent more than does any other person that is permitted to reorganize under the National Bankruptcy Act.

QUESTIONS PRESENTED

The questions presented directly before the court in cases consolidated in this proceeding are two. Each distinct from the other. First, is the validity of section 75 of the National Bankruptcy Act, subsections (a) to (r), and the other involves the validity of the Frazier-Lemke Amendment, subsection (s). It is not my purpose to discuss the constitutionality of section 75 before the amendment. I regard the decisions in the Landquist and Rock Island cases as being determinative of that question in this district, and pass to a consideration of the validity of subsection (s), the Frazier-Lemke Amendment.

THE CONSTITUTION CHARGES THE FEDERAL COURTS WITH VISION AND UNDERSTANDING

In the discussion of this amendment, I shall chiefly

confine my argument to the broader aspects of the questions presented. To a reiteration of the broader and more fundamental principles that govern the Constitution, and the purposes for which that immortal document was framed by those great patriots of the past, who attempted to envision a future in which the Constitution would act as a legal oriflamme, and not as a ball and chain to shackle this mighty Republic to a dead past forever gone. The light in which all of this new social economic legislation must be judged, is the light which illumined the vision of the creators of that great document. The purposes which guided them. The principles that it was intended to safeguard. This emergency legislation rises from the same source as the Constitution itself. Indeed, the Constitution itself was promulgated at no greater crisis in the history of this country, than is the legislation that is now presented for considera[illegible] And the Supreme Court itself has again and again stated that it is its duty, that it is the duty of the Federal courts, not to consider themselves as moles, buried beneath the surface, oblivious to the great economic tides that ceaselessly roll above them. Not to blind their eyes to the ever changing economic kaleidoscope. But that they must take judicial notice of the conditions that confront them. That it is their duty to keep themselves informed as to the economic conditions of the comtry. Time does not permit an extended discussion.

Mention might be made of Atchison, T. & S. F. Ry. Co. v. U. S., 284 U. S. 248, Home Bldg. & Loan Ass'n. v. Blaisdell, 290 U. S. 398, specifically mentioning that a national emergency exists.

In re Cope, 8 F. Supp. 778.

Rock Island Case, 72 Fed. (2d) 443.
In re Landquist, 70 Fed. (2d) 929.

And thus recently United States Judge Atwell, of Texas, in holding section 75 constitutional, said in Paine v. Capitol Freehold Land & Trust Co., 8 Fed. Supp. 500, p. 501:

> "A trial court who sits in this portion of the state, where for several successive seasons the whole face of the earth has been blighted by drouth, is forced to view with complacency almost any effort for the relief of those who depend upon the fruit of the soil for livelihood. Likewise the mind of the judge must be open for the appropriate reception and careful study of any properly fathered effort for the relief of the present situation."

And it is in that frame of mind that every patriotic citizen, every person who has sincerely at heart the good of his country, the good of his fellowmen, must evaluate all emergency legislation. And this is especially true when we approach legislation passed under the specific constitutional authority to make uniform laws relating to bankruptcy.

CONSTITUTIONAL GUARANTIES

As the Supreme Court has said, that while the meaning of constitutional guaranties never varies, the scope of their application must expand or contract to meet the new and different conditions which are constantly coming within the field of their operations.

Euclid v. *Amber Realty Co.*, 272 U. S. 365, 47 Sup. Ct. 114.
Also see Atchison, T. & S. F. Ry. Co. v. U. S., 284 U. S. 248.

PURPOSE OF THE LAW

The Frazier-Lemke Amendment is essentially emergency legislation. It is limited by its terms to debts which accrued before June 29th, 1934, and it expires by limitation, 5 years after its passage. It is part of that series of laws which Congress in section 78 of the National Bankruptcy Act, stated were enacted because a grave emergency existed in the affairs of the country.

As William Lemke, one of the authors of the Act, said in that classic brief he filed, as amicus curiae in the Radford Case (Br. p. 21):

> "The Frazier-Lemke Amendment is a constant reminder that no creditor, or set of creditors, have a right to destroy society—have a right to destroy agriculture—the basic industry of this nation—the very life of this nation. * * * * * * * This Amendment marks a new epoch—from now on the debtor is going to be considered as well as the creditor. The Bankruptcy Act is going to become an act of conservation and not an act of wreckage. Property and wealth will be conserved in the hands of those who created it—not destroyed. Debtors will be given a reasonable opportunity to make good."

And the Court of Appeals of this circuit in the Rock Island case, 72 Fed. 443, in reaffirming the Landquist case, said:

> "(4) Congress, having the express authority to enact legislation on the subject matter of bankruptcy, was the sole judge of the means and their appropriateness to the purpose of the legislation so long as said means did no violence to the provisions of the Constitution."

The court continued p. 451:

> "Surely, we are justified in giving to the amendment a liberal construction, one that is consonant

with the purposes of this remedial legislation. That which distinguishes this section from the old act—the gist of the change evidenced by this amendment, that which makes it effective—is the provision which calls for a *plan of reorganization.* It calls not for a sale of assets and a discharge of the debtor, but for a plan of reorganization wherein the indebtedness and capital structure are changed (usually reduced) so *that the debtor may live and the creditors will receive more than is obtainable upon a liquidation sale.* The consummation of a fair and equitable plan of reorganization is the goal of the legislation. How could a plan of reorganization be perfected unless the courts restrained creditors and lienholders from proceeding in a manner which would defeat the consummation of said plan?"

THE POSITION OF OPPONENTS

The purpose of this law is to keep the farmer on the farm. Not make him a hired hand for the insurance companies or other lien holders.

But these lienholders want the land. They freely admit it. Because no other conclusion can be drawn from their oft reiterated assertion "that the court has no power to take one man's property from him and give it to another." Whose property is involved here? It is the farmer's. But the lien holders take the position they own it. Hence their statement "the debtor must surrender his property to his creditors." The two statements together merely mean that Congress cannot deprive them of the privilege they had under the Bankruptcy Act before it was amended, by which a lien holder could usually bid in the land and apply it against his indebtedness. Hence, their insistence that the Constitution prevents any such regulation as that we are discussing here. That sink or swim, these

greedy creditors must get the last drop of blood, and must be permitted to peel the farmer right down to the hide, and perhaps even shave the cuticle. That is their construction of the Constitution, I say, and I think, that this court, and every other court that carefully weighs the case, is going to agree, that that is not the meaning of the Constitution. That the Constitution, instead of permitting any such avaricious, unreasonable, and uneconomic policy in this day of stress, expressly gives Congress the power to forbid it. I say that the procedure that these lien holders, and other lien holders are adopting, is unconstitutional, and violates every principle that the Constitution was passed to safeguard. That they are the persons, who are urging upon Congress, and upon this court, the adoption of an unsound, illegal, and unconstitutional procedure. That if their advice and their propaganda was followed, that they would turn Congress into an assemblage of pirates, that would scuttle the ship of state, as surely and as aptly as ever did a blood thirsty buccaneer on the Spanish Main sink one of the golden galleons. I say that if their construction of what the Constitution means was followed, the Constitution would become manacles around the wrists, and shackles around the ankles, of every progressive and forward thinking citizen. That so irksome would be these restraints on the liberty of the citizens of this country, that it would be but a short time before they would rise in irresistible revolution, and that shortly we would have no such constitution, of the kind these honorable gentlemen representing the lien holders contend we have. They are here as the exponents of privilege. They are not so numerous as the Hessians of the Revolution, but

just as determined, just as ruthless, even though they mask their purposes in the sweet smiles of legal courtesy, and the docile demeanor of a United States court room. And I think your Honor will agree this language is no exaggeration, when I bring to your attention a little later some examples of the attitude of their clients, taken right from the records of this court.

THE CONSTITUTION

What is this document we are called on here to discuss? Your Honor, it is a constitution. Perhaps for the benefit of our honored brethren it might not be amiss to enquire, what is the constitution. Let the Supreme Court answer!

It has said:

> The "Constitution" is a written instrument. As such its meaning does not alter, that which it meant when adopted, it means now. Being a grant of powers to a government, its language is general, and as changes come in social and political life, it embraces in its grasp all new conditions which are within the scope of the powers in terms conferred, while the powers granted do not change, they apply from generation to generation to all things to which they are in their nature applicable. That which is implied is as much a part of the "constitution" as that which is expressed.
>
> *State of South C.* v. *U. S.*, 26 Sup. Ct. 110, 111, 199 U. S. 437.

So Cooley says, a constitution is not the beginning of a community nor the origin of private rights; it is not the foundation of law nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights

to the people, but is the creature of their power, the instrument of their convenience.

Cooley Const. Lim. p. 37 quoting State v. Ab. Chuey, 14 Nev. 79, 101.

This document, our Constitution, has served in the short space of a century and a half, to build a mighty nation, and a far more complicated civilization than history affords any record of. A country, comprising within its borders what was originally some 90 different nationalities, who inhabit 48 different states, each with its own laws, each with its own viewpoint, each functioning under its own law, and particular economic conditions, yet knit together, indissolubly, with one common purpose, with a common aim, functioning each to each in the closest possible human union, although separated by 3,000 miles of plains and mountains, bordering on the two greatest oceans of the world, and lying between almost the arctic on the North and the tropics on the South. Administering mandates, possessions, or geographic interests, in probably every meridian of the world. Comprising less than 8 percent of the population of the world, it owns 40 percent of the wealth. 80 percent of all the telephones of the world are in the United States. 90 percent of all the automobiles, including the Fords. Imperfect as is this government, it is still the most democratic, the most representative, the closest to the man and the state, than has yet been devised by the mind of man. It was created by the fathers of a country, of whose area over 80 percent was inhabited by Indians. To 90 percent of its area only a few untamed hearts had yet penetrated. Almost three quarters of a century after its adoption it still took 9 months to travel from its East coast to its West

coast, where today the journey can be made in 11 hours. Yet that Constitution, that again I say, rightfully looms so large in the minds of the opposition, created by the representatives of thirteen farming states, whose population were either voluntary or involuntary exiles, whose country consisted in truth of the untamed wilderness and the unharnessed waterfall, has served as a model of government, for nations with centuries of legal learning, centuries of artistic progress, centuries of social science, in back of them. That document has served as a model for every other free nation, which since then has sprung forth from the womb of the world, in every quarter of the globe. So we may well be proud of it. We may not be accused of being overly enthusiastic when we use that rather trite phrase, "immortal document," in referring to it. That constitution was the written climax of a struggle that freemen had engaged in for centuries. Ever since there has been such a thing as history, it has always recorded a struggle against the greed of the privileged. Some peculiar psychology appears to infest the minds of those who obtain power through the exercise of privilege, and the consequent garnering that seems a concomitant. Well did that great court in Mississippi, in Henry v. State, 39 So. 856, 893, 88 Miss 343, say:

> A "constitution" is the magna charta of the peoples rights, the fundamental law of the land, intended not for short periods of time, but for all time.

WHENCE COMES THE CONSTITUTION

Our Constitution was born in the middle ages with the birth of the Magna Charta. That was an explosion that rocked the souls of freemen, and the reverberation

of that explosion will echo in their hearts, and resound in their ears, as long as mankind endures on earth. It was a symbol that freemen could triumph over privilege. When the Magna Charta was signed on the heath of England, the American Republic and every other republic that succeeded since then, had its moment of conception. Life, liberty, and the pursuit of happiness, are the purposes expressed in the document which founded this Republic, and are the purposes which the constitution was intended to safeguard. It was declared that there was conceived in the soul of man in the moment of conception, certain inalienable rights that no despot, physical, mental, or spiritual, had a right to impair or extinguish, and those inalienable rights were declared to be life, liberty, and the pursuit of happiness.

Life is a rather complicated thing to define, I am afraid. But there are three primitive problems connected with it, food, shelter, and clothing. You must have those to have life. You must have an opportunity to get them to have liberty. And unless you have them and have the opportunity to obtain them on equal terms, freemen can't have happiness. It is a small and a concentrated circle. The situation that is confronting a certain portion of agriculture today, as William Lemke points out, is the fact, that those inalienable rights guaranteed to farmers by the constitution of this country, and which the solemn declaration of freemen everywhere say is the inalienable attribute of a freeman are jeopardized by the actions of a "few unreasonable creditors."

THE DECLARATION OF INDEPENDENCE

Old as they are, learned by us as children, forgotten

as men, it might be well to refresh our memories with some of those classically expressed truths, which caused the mighty hand of freemen to call into being this great Republic. Thus the source of our country, the Declaration of Independence, stated:

> "We hold these truths to be self evident, that all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure their rights, governments are instituted among men, deriving their *just* powers from the consent of the governed."

As justification for the divorce from Britain, there was submitted an indictment against the King:

> "He has refused his assent to laws, the most wholesome and necessary for the public good.
>
> "In every stage of these oppressions we have petitioned for redress in the most humble terms —our repeated petitions have been answered only by repeated injury."

It was stated, to our British Brethren—we have appealed to their native *justice* and magnanimity, and our pleas fallen on deaf ears. Your Honor, in all verity, these words might well have been uttered by the farmers who today have to deal with their unreasonable and greedy secured creditors.

When the constitution was framed the United States was practically nothing but a farming country. It was called into being by farmers. It was farmers who were the Minute Men at Lexington, fought at Bull Run, and starved at Valley Forge, just as they have starved the past few years.

When they called into being this country, they called it into being for freemen, the symbol of whom had been since time immemorial, the right to own land.

Hence the Articles of Confederation provided:

> "The free inhabitants of each of these states, paupers, vagabonds and fugitives from justice excepted, shall be entitled to all privileges and immunities of *free* citizens in the several states."

And in the preamble to the Constitution it was said:

> "We the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of *liberty* to ourselves and our posterity, do ordain and establish this constitution of the United States of America."

SECTION EIGHT OF THE CONSTITUTION

And in Section 8 of the Constitution they gave the Congress power to establish uniform laws on the subject of Bankruptcy.

Absolutely unlimited in every respect, except, that such laws had to be uniform. And the Supreme Court has again and again decided that uniformity, merely means geographic uniformity.

And by "Bankruptcy" was merely meant the relation of debtor and creditor. I shall pass by any detailed technical discussion of the cases, such as the Moyses case,[1] the Blaisdell case,[2] or others, which no doubt other counsel will discuss, with far greater ability than I possess, and which my time will not permit, nor the great cases of In re Klein,[3] or In re Reiman,[4] classic in American judicature. But I do want to read to your Honor some extracts from a decision rendered by a

1. Hanover Nat. Bk. v. Moyses, 186 U. S. 181.
2. Home Bldg. & L. Ass'n. v. Blaisdell, 290 U. S. 398.
3. In re Klein, 1 How. 277; Fed. Cas. 7866.
4. In re Reiman, Fed. Cas. 11,673; 11,675.

great, a learned, and a humane Judge, whose decisions are always cited with respect by the courts of the United States. I refer to Judge Dick of the North Carolina Circuit, who rendered some extremely able opinions, shortly after the close of the Civil War, when Congress amended the Bankruptcy Act to secure to debtors the benefit of their local exemptions.

THE QUALITY OF MERCY IS INHERENT IN THE POWER OVER BANKRUPTCY

In the case of in re Vogler, decided in 1873, Fed. Case No. 16,986, 28 Fed. Cas. p. 1248, the question that came before District Judge Dick was whether the bankrupt was entitled to obtain the real and personal property exemptions provided in article 10 of the Constitution of North Carolina, or its equivalent in money derived from the sale of the real estate and personal property in preference to claims for liens. It is interesting to observe that then as now, the "greed of creditors" rendered remedial legislation necessary for the financially embarrassed. District Judge Dick said, 28 Fed. Cas. p. 1248, 1249:

> "Until within a recent period the statute law of this state subjected to execution the lands, person, and chattels of a debtor, and only a few articles of small value were allowed as exemptions to keep the debtor and his family from absolute starvation or dependence upon the charity of neighbors. *This legislation and the natural greed of creditors necessarily had the effect of filling the country with families of paupers who were a burden instead of a benefit to the state. The constitution of this state, adopted in* 1868, *was the commencement of a new, more humane, and enlightened policy upon this subject. The results of the Rebellion had rendered a large number of our people bankrupt in fortune;*

and the convention of 1868 *determined to insert a provision in our organic law, to preserve the liberty of an honest and unfortunate debtor, and secure a home for his family, and thus induce him to remain in our midst, and encourage and enable him by honest industry to assist in restoring wealth and prosperity to the state.* Our feudal ancestors regarded the home and person of the citizen as belonging to the state, and necessary to its security, prosperity, and power. In allowing the homestead, and abolishing imprisonment for debt, except for fraud, the convention of 1868 adopted the same wise policy, but for a far higher object; not for the purpose of making the citizen a ready and efficient soldier in war, but to encourage and enable him to direct his intellect and energies in the arts of peace and the pursuits of industry, and thus contribute to national wealth, prosperity, and advancement."

It might be observed here that we are now emerging from a far greater economic battle, one more wide flung, one whose results have been far more disastrous than that of the War of the Rebellion, yet evidently creditors have not changed. In discussing the attitude which the mind of the judge should have toward such remedial legislation, Judge Dick said, p. 1250:

> *"It is a well-settled rule in the construction of constitutions and statutes, that the intent of the lawmaker ought to be ascertained from the circumstances of the times, and the purposes and remedies in view, and that the judicial department of the government ought to assist, as far as it is consistent with a liberal construction of the organic law, in securing and advancing the purposes and remedies intended pro bono publico."*

In discussing the power of Congress, Judge Dick said, p. 1250:

> *"Congress has the power, under the constitution,*

to pass bankrupt laws and make all provisions which it may regard as necessary to carry out a system of bankruptcy. The purpose of a bankrupt system is to administer the estate of an insolvent person so as to do justice among all creditors by an equitable division of the assets; and then discharge the existing debts of a bankrupt, who in all respects has acted fairly and honestly in surrendering his property. This system is certainly founded in a wise and enlightened policy, as it frees an honest and unfortunate debtor from unexpected financial embarrassments which repress his energies, and from which he cannot extricate himself by reasonable exertions; and enables him to enter again into active business with new spirit and much wisdom learned from the experience of misfortune. He may thus become a good and useful citizen, and a character for honesty, industry, and intelligence will soon give him again employment and credit. If an insolvent person makes an honest surrender of all his property to his creditors, their debts in natural justice ought to be discharged, as they have no moral right to make the debtor a slave and demand the proceeds of his manual or intellectual labor, prevent him from educating and comfortably supporting his dependent family, and thus cause a serious injury to the state. These liberal and humane views as to the relations between creditors and honest insolvent debtors have, in the last twenty years, rapidly impressed themselves upon public sentiment, and form a striking feature in the enlightened and patriotic homestead legislation of a large number of the states of the American Union."

The same judge decided another well known case.

LIENS MAY BE DESTROYED IF NECESSARY

One of the most widely discussed cases ever decided in the United States on the subject of Bankruptcy, is the case of in re Jordan, decided in 1873,

Fed. Case No. 7514, 13 Fed. Cas. p. 1079, also decided by the famous District Judge Dick of North Carolina. In this case, in the course of the bankruptcy, the register assigned to the bankrupt certain homestead lands as part of his rightful exemptions, as against a judgment rendered prior to the ratification of the constitution of North Carolina upon a contract made before the present Bankruptcy law was executed. The question certified to the district judge was whether the bankruptcy law was constitutional, whether it could have a retrospective effect without impairing the obligation of contracts, whether Congress had such power, and whether the bankrupt was entitled to his exemptions as against the lien granted by judgment, etc. Justice Dick held the bankruptcy law was constitutional. That under the Constitution, Congress had absolutely unlimited power to prescribe what should be done with a bankrupt estate, subject only to one restriction, that laws on the subject of bankruptcy should be uniform. He stated that Congress under its general bankruptcy power *"could void all liens, whether existing by statute, by usage, by special contract, or at common law."*

He said, in re Jordan, Fed. Case No. 7514, 13 Fed. Cas. p. 1079, 1080:

> "As it was easy to foresee that there would be many business transactions and much commercial intercourse between the citizens of the several states which would necessarily produce considerable individual indebtedness, which might result in extensive financial embarrassment, it was obvious to the framers of the federal constitution that the benefits of a wise, humane and general system of bankruptcy, which might, under certain exigencies, become necessary to promote the happiness and commercial prosperity of the nation, could only be effectually established by the federal gov-

ernment adopted by the people of the several states for general and national purposes. To provide for any emergency that might arise for a general bankrupt law, the constitution vested the necessary sovereign power in congress with no other limitation than that the laws upon such subject should be uniform in their operation among the several states."

He continued, p. 1080:

"Congress certainly has the plenary and paramount power, save the restriction above considered, to pass bankrupt laws which will not only impair the obligation of contracts, but entirely discharge the debtor from such obligations, no matter when or where contracted. *Congress, also, has the power in establishing a uniform system of bankruptcy to do away with the effects of liens created by the judgments of any court. If a judgment can be discharged by a bankrupt law there is no reason why a lien which is an incident to a judgment cannot also be discharged.*"

And the learned judge also said, p. 1080:

"The homestead laws of this state do not abolish judgment liens, but merely postpone the time of their enforcement. This modification of a legal remedy may well be regarded as reasonable by a court of justice which takes into consideration the anomalous condition of things existing when the modification was made, and that it was prompted by a wise and humane policy which must necessarily result in the general public good. While the states are prohibited by the constitution from impairing the obligation of contracts—either directly, or by virtually abolishing existing remedies—no such inhibition is imposed upon congress. *The power expressly conferred upon Congress to enact uniform bankrupt laws, is necessarily an express power to do away entirely with contracts, as such a result is the very object and essence of bankrupt laws. But it is insisted that while con-*

gress may have this paramount power over contracts, it exceeds its authority in enacting that state exemptions shall be 'valid against liens by judgment or decree of any state courts.' This is equivalent to saying that the contract may be impaired, but the remedy must not be interfered with—the principal may be destroyed, but the incident is protected against legislative action. There is nothing in the nature of liens why they should be thus specially protected, as they are not vested rights; but there are strong reasons why they should not be recognized and enforced by bankrupt laws. The enforcement of liens is certainly contrary to the policy of a general system of bankruptcy, the object of which is to distribute the estate of an insolvent debtor among all of his creditors, upon the principle that equality is equity. Liens, upon general principles, certainly deserve no special favor and protection in bankrupt laws. The bankrupt act, before the amendment of March 3,1873, in express terms avoids liens valid under state laws and created by the levy of an attachment within four months before the commencement of proceedings in bankruptcy, and this action of Congress is generally conceded to be constitutional. Congress has even interfered with vested rights, for by the thirty-fifth section of the bankrupt act, assignments and conveyances made under certain circumstances are avoided, although such assignments and conveyances are valid at common law and under the laws of the state, and the parties have acquired a complete title and possession of the property conveyed. I have a very decided opinion that congress did not exceed the limits of its constitutional powers in enacting the act of March 3, 1873. **I also think that Congress, under its general powers over the subject of bankruptcy, could avoid all liens, whether existing by statute, by usage, by express contract, or at common law."**

And just last week, there has been published an opinion by Judge Symes of Colorado, which for reason-

ing, and learning, is worthy to be considered with those of Judge Dick. Let me read just two brief extracts, from *In re Cope*, 8 *Fed. Supp.* 774. Thus, on page 780:

> "This grant of power to the Congress to legislate on the subject is general in its terms, paramount, and unrestricted, International Shoe Co. v. Pinkus, 278 U. S. 261, at page 265, 49 S. Ct. 108, 73 L. Ed. 318, except, as stated in Silverman's Case, Fed. Cas. No. 12,855, the laws passed pursuant thereto shall be uniform throughout the United States. This uniformity is geographical and not personal. Hanover National Bank v. Moyses, 186 U. S. 181, 22 S. Ct. 857, 46 L. Ed. 1113."

And on page 784:

> "Finally, we must not overlook the importance of section 78 (11 USCA § 301), a solemn declaration of policy by the Congress that a national emergency exists, which renders imperative the further exercise of the bankruptcy powers of the Congress. The Supreme Court has said in the Minnesota Case, Home Building & Loan Ass'n v. Blaisdell, 290 U. S. 398, 54 S. Ct. 231, 239, 78 L. Ed. 413, 88 A. L. R. 1481, that while Congress cannot create powers, it can, under an emergency, exercise powers that have heretofore lain dormant. It is not for the court to question this declaration by Congress, which may be said to be an exercise of the broad police power vested in the federal government, and which exists independent of bankruptcy. * * * In conclusion, I am of the opinion that while the so-called Frazier-Lemke Act goes further than any provisions of the Bankruptcy Act existing at the time of its enactment, that it is within the bankruptcy clause of the Federal Constitution. This power is plenary and unlimited, and cannot be destroyed by other provisions or amendments of the Constitution."

THE GREED OF CREDITORS

The farmers of this district today have forgotten the years of hard work, have forgotten the years of back-breaking toil that they have put into their farms. They have forgotten the thousands and tens of thousands in many cases, that each of them has invested in those farms. They are fighting today just for shelter, for a chance to educate their children, and an opportunity to get some clothing, and for reasonable security that they and theirs are going to eat. That is the bald situation before this court today. That is the bald situation that confronted Congress when this law was passed, and that bald situation has been brought about and has been perpetuated, and is being continued, by nothing more nor less than the attitude of a few and a specific number of unreasonable creditors. And that is why we are here. And that is why Congress passed the Frazier-Lemke Bill. I could stand before your Honor until I collapsed from weariness, and until every one in this court room collapsed from weariness, and tell you of instance after instance, from my own personal experience, one humble lawyer from the cornfields of Benton County, of instances, each so horrible, so revolting, so shocking, to a person who had any human feeling, any human understanding, any sympathy, any vision, considering that in each one of these cases a man's home has become involved, because of a world cataclysm, that I venture the assertion, that your heart would weary, and you would cry "stop," long before your ears were stopped through physical weariness. You think these are extravagant statements?

These lien holders that are before your Honor, are tearing at this last and only bulwark that stands be-

tween the farmer and eviction from his home, and will have you believe that they have an inalienable right to jeopardize his right to liberty, happiness, and that the Constitution doesn't safeguard the farmer from that ruthless purpose, and prevent in this district, individual oppression just as shocking, as any that ever brought about the adoption of the Magna Charta, or caused the Revolution, that resulted in the adoption of the Constitution. And I can go to the records of this court to prove some of them. Let me take the time of the court for just a moment for a few typical cases. I have before me a letter from the insurance company in the McDuffie case, Cause No. 2221 here.

In this case the debtor had two farms. One of 80 acres and one of 120 acres. On the 120 acres the holder of a first mortgage for $4,000.00 agreed to scale down to $3,500.00. On the 80 acres the Mutual Benefit held a first mortgage of $5,000.00. Knowing its attitude, we offered it $5,000.00, the full amount of its claim, and in order to raise that amount, other secured creditors took less than I believe they were justly entitled to. I quote from a letter from their attorney, dated January 25, 1935, to me, in which he said:

> "The local counsel in this case * * * advises that the debtor is willing to offer $5,000.00 in payment of the claim of the Mutual Benefit Life Insurance Company, but my instructions from that company are that it will accept $5,000.00 as of October 1st, 1934, with interest thereon at 5 percent to the date of payment * * *."

So Mr. McDuffie had to file a petition in bankruptcy.

And here is a communication from counsel for another insurance company, the Northwestern, in the

Pitstick case, Cause No. 2184. We offered it $12,500.00 in the conciliation proceeding. The insurance company agreed to accept $13,600.00, but finally stated it might take $13,000.00. We said we would try to make it, and the following morning, I received this letter, in which it was stated:

> "It stands to reason that the greater the amount offered the company, the greater will be the possibility of favorable action by the committee. If therefore in making the figures you try to make the net proceeds as great as possible, you will thereby enlarge the possibility of favorable action by the committee. For example, if Mr. Pitstick would personally pay recording charges and personally arrange for the necessary insurance, you might be able to submit a figure to the company sufficiently attractive to it * * *"

A matter of only $40.00 or so on a $13,000.00 deal.

And perhaps your Honor will recall the Blanchette case, Cause 2203, where your Honor granted an injunction, where foreclosure was filed against a man who had owned that farm for 35 years, over a difference of $136.00. Or the Shannon case, Cause 2172, a default case, where attorney's fees of $1,460.00 were taxed, although one of the attorneys works on a monthly salary, and I am sure the local attorney did not receive over $150.00.

These are not exceptional cases. They are typical.

A TYPICAL INSTANCE JUST REPORTED

Let's go to some of the cases in the law books. The Chemical Bank and Trust Company of New York is a very holy financial institution as your Honor knows. To illustrate that the same warp and woof of remorselessness, of treachery, of inhumanity, is inherent in the

hearts of these financial giants: In this case the Chemical Bank and Trust Company had a mortgage on a woman's home. It foreclosed. The mortgage was for $10,000.00. It got a decree for $11,000.00. It bid the property in for $500.00, and took a deficiency judgment for $10,500.00. Six months later they sold the property for $12,000.00. In the meantime the little lady had obtained some property, so these generous gentlemen promptly issued a deficiency execution against her for the $10,500.00 deficiency. Instead of being crushed, this particular mouse uttered a protesting squeak, with the result, that she hired lawyers, and they happened to find some statute of New York under which this deficiency execution could be restrained. That is the case of Chemical Bank and Trust Company v. Adam Schuman Associates, 268 N. Y. S. 674.

The opinion of the Supreme Court of New York in that case is extremely illuminating, as illustrating the condition that confronted this country, and I wish to read an extract from it to your Honor. The court said, p. 76:

> "What 'basis of fact or circumstances' exists for challenging this travesty, miscalled an auction sale? It seems almost superfluous to call some recent happenings to mind. Ten months ago every bank in the land was closed and a lamentable number of them have never since reopened. Substantially all of the mortgage guaranty companies in the state are being wound up, or, stated less bluntly, 'rehabilitated,' and thus a great industry, the backbone of building, as well as of conservatism and thrift, is in ruins. The insurance companies, savings banks, and trust estates, formerly generous providers of mortgage money, are literally surfeited with holdings of real estate through foreclosure or default. The Legislatures of various

states, including our own, have declared the existence of a public emergency and enacted laws designed to relieve helpless debtors. The federal government, through sheer necessity, has embarked upon a tremendous lending program in an effort to save the homes and farms of the distressed. Banks have largely abandoned their time-honored function of accomodating the worthy borrower and, instead, pride themselves upon their liquidity, refuse to pay interest on deposits, and bring forward fatuous schemes of charging depositors for safeguarding and using their funds. Possession of the very gold with which this judgment debtor doubtless covenanted to pay her obligation is now declared a crime. Every day at the real estate exchange witnesses the solemn, but costly, farce of offering dozens of parcels of valuable realty, which go to the respective mortgagees without a single competing bid.

"It was into this maelstrom of economic forces that Margaret Ferguson was plunged through the default of her grantee and the consequent election of the plaintiffs to call their loan. The law presumes that a wide-awake debtor will, under such circumstances, apply to and obtain, from another lender, equivalent accommodation and thus protect herself against a possible deficiency judgment. Such a presumption is well enough in normal times, but it has no proper place in a topsy-turvy period like the present. In truth and in fact, mortgage money is, and for some months has been, practically unobtainable, and one need do no more than compare the day-to-day record of mortgage transactions with those of a year or two ago, to satisfy himself on that point. These considerations lead to the conclusion that the sale price of the property was so grossly inadequate that no rights, except possibly, those of innocent third parties, can be predicated thereon, and further that there is a sound 'basis of fact and circumstances' for equitable intervention."

And your Honor, let me say this. As I have said before,

the foregoing are typical cases. They can be reiterated by the dozen, perhaps hundreds, in this district alone. I have brought with me Mr. Robert G. Williams of Monticello, Secretary-Treasurer of the Monticello National Farm Loan Association, the largest in the state, and incidentally rated number one by the Federal Land Bank. He knows the inside story of hundreds of farmers, and will I may state, corroborate every word I have said as being nothing but the cold sober truth, typical of this class of cases.

How can these creditors expect the farmer to pay 100 cents on the dollar?

Great nations have been unable to pay their debts. The British Empire in its note to our state department, June 1, 1934, in confessing its inability to meet its obligations, said:

> "* * * it was found impossible to arrive at a settlement acceptable to the two governments in face of the unprecedented state of world economic and financial conditions."

Tens of thousands of industrial corporations and a number of railroads are scaling their indebtedness to conform to their income, and present economic conditions under Sec. 77 (B). Many municipal corporations under section 80. And they are retaining their property. Why should the farmer, the backbone of this nation, yes, the founder of this nation, the defender of this nation, not be permitted to have a similar privilege. But even under the Frazier-Lemke Law he doesn't get it.

He has to pay the full appraised value of his property. A condition exacted from no other individual.

Section 70 B of the Bankruptcy Act, applying to other individuals, expressly provides:

"Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than 75% of its appraised value."

And bankruptcy courts usually recognize a sale of a bankrupt's assets at 75 percent of the appraised value as being so good, that the trustee usually does not apply for leave to sell on that basis, and if he succeeds in making such a sale, the court says "Bless you, thou good and faithful servant."

But the farmer, has to pay 100 percent of the present appraised value, and perhaps two or three times that much five or six years hence.

THESE CASES DO NOT SERIOUSLY AFFECT THE INSURANCE COMPANIES

But no doubt it will be said, these insurance companies will go to the bow wows if they don't force the farmer off the land, or get 100 cents on the dollar. That it is their policy holders' money they are safeguarding. That if they can't wreck these farmers they can't pay their policies. Let us see—

This subject was exhaustively debated in Congress. I have all the figures here, but won't weary you with them. Evan Clark's book, "The Internal Debt of the United States," was accepted as authoritative. He estimated that all the insurance companies combined held about $2,146,000,000.00 of farm mortgages.

In the "Wall Street Journal" for July 3, 1934, Governor Myers of the Farm Credit Administration stated only 14 percent of the commissioner's loans, which are made to the most heavily indebted farmers, were delinquent. Two thirds were for less than 30 days.

So we can safely say, that judging by this, not over 10 percent of the mortgage indebtedness held by the insurance companies can, by the greatest stretch of the imagination ever come under the Frazier-Lemke bill. A total of roughly $200,000,000.00. The maximum loss under present conditions, even if the farmer through some legerdemain could immediately pay the appraised value of his property would not exceed 25 percent. So we have a total loss to all the insurance companies of the country of some $50,000,000.00 as against their entire assets of approximately 22 billion.* Why your Honor, there is many an individual company who today would be glad to get out from under some single underwriting it made in the good old days, for no greater loss than that whole amount.

RAILROADS REORGANIZE AND SCALE DOWN. THESE SAME LIEN HOLDERS FAVOR SUCH PROCEDURE

I was recently rather amused to receive a communication from the protective committee formed to protect the holders of Chicago & Eastern Illinois Railway bonds, 5's of 51. It was stated that the Mutual Benefit Life Insurance Company owned several millions worth of these bonds, and I think its president is a member of the protective committee. The bonds today are selling at about 8c on the dollar. A plan of reorganization has been worked out, and it is being sponsored by this protective committee, which will involve a very drastic scaling down of these bonds, and they will have to be scaled down. On the basis of the market quotation of $8.00, the railroad is selling for about $6,000,-

*Insurance Year Book, 1934, gives assets of 318 Legal Reserve Companies in U. S. as $21,197,582,350.00.

000.00. This railroad a number of years ago was given a physical valuation by the Interstate Commerce Commission of $65,000,000.00, and since then it has invested some $20,000,000.00 in its property, so that today, the physical valuation of the road is some $85,000,000.00, which is considerably more than the face amount of all its outstanding securities. Now Mr. Mutual Benefit Life Insurance Company doesn't go down to the Chicago & Eastern Illinois road and grab a locomotive off of the track, and attempt to squeeze out of its entrails, the other 92c, which represents the difference between the market value of the bond and its face value. No. And why not? Because the locomotive being an inanimate thing, can not suffer, and if Mr. Mutual Benefit squeezed it hard enough, it would merely disgorge a few dying ashes, which at best, could only be used to cover *over* the trail of the field man, to whom had been delegated that particular task.

But in the case of the farmer, what does the field man do? He tries to squeeze the farmer and squeeze not 92c, but perhaps the 2 or 3 cents difference that he has been offered. And why does he do it? Because the farmer has feeling, he has emotions, he has a brain, a soul and a heart, and these fellows come out, sometimes day after day, and week after week, and they work on the farmers, and tell them the most terrible lies that the mind of man ever conceived, and then offer them the most specious and deceiving inducements to get $15.00 here, or a deed here, or a deed in the disguise of a so-called "certificate of entry" there, so that their rights may be bartered away.

The latest wrinkle is to offer to combine the mortgage and delinquency in one mortgage at 1 percent

interest for the first year, provided the farmer will give them a deed to the farm. And they will then give him a deed back with a new mortgage. The purpose of this is to create a debt subsequent to June 28th, 1934, and hence not covered by the Frazier-Lemke Amendment.

WHAT IS A DELINQUENT MORTGAGE WORTH

If the farmer was inanimate like the locomotive, these insurance companies would take the value of their mortgages, their real value, in the cases where they are in default. Just as they do in the case of railroad bonds and industrial bonds that are in default, and give the debtor a new lease on life to assist him in doing his part in building up the country.

What is a mortgage in default worth your Honor? What would you pay for a mortgage in default no matter what the value of the land is? It is just worth so much, if the farm can't produce enough to pay the interest on the mortgage, and the farmer has tried faithfully to meet his obligations, and I have interviewed 500 of them, and I have yet to find one that has not tried to do it. That mortgage is certainly not worth 100 cents on the dollar. *Any more than is the 5% bond of the C. & E. I. Ry. now selling at 8c on the dollar, or at value of about six million dollars for a property that could not be reproduced for probably fifteen times the market value of its liens. So why should the same lien holders demand that a defaulted farm mortgage be paid* 100 *cents on the dollar when the income and the value is not there.* Why should they have it? What moral law is there which gives them the right to make the farmer pay it if he can't pay, if he has

tried to pay, if he has borrowed from his relatives, after he has borrowed from his friends, after he has given them everything he can? You answer, the security. That will be the answer, and that I see in your Honor's mind right now. The security. And what is the security worth? Merely a future imaginary value, thru which the lien holders hope to recoup losses from other investments.

THE EMERGENCY FARM MORTGAGE ACT OF 1933

Your Honor is bound to take judicial notice of the laws of the United States. At the end of 1932 and the beginning of 1933, corn was selling at 12c. We won't harrow your memory with the price of the other grains. 90 percent of the mortgages were in default. 90 percent of the taxes weren't paid. So Congress passed the Emergency Farm Mortgage Act of 1933, which was supposed to be a farm relief measure. Under this law the Federal Land Banks were given several billions of dollars to lend to farmers. It was provided that in valuing the land of the farmer, the banks should not take the low value of the land as it existed at that time, but had the farmer gone into bankruptcy and had his property been sold at a bankrupt sale, that is what his land would have brought, but it said that they should use the 1909 to 1914 prices and income as a standard, and they should arrive at the value of the land and loan 75 percent of that value. The commotion that immediately arose among the lien holders, your Honor, is comparable to nothing else than feeding time in a zoo, the throwing of raw meat to the hungry lions and tigers. A law passed for the direct relief of

20 percent of our population, and which indirectly affects perhaps 40 percent of our population, a farm relief law, or perhaps more accurately, farm relief legislation, and which incidentally, was intended as reasonable relief legislation for lienholders, was immediately turned into *exclusive* relief legislation for joint stock land banks, insurance companies, and other holders of farm mortgages. Remember until that legislation was passed, the market value of lands in Benton County, the premier county of Indiana, was not over $25.00 an acre? The income off of those properties was not sufficient to pay even the taxes, had the entire income been devoted to that one purpose, and had the farmer and his family by some mysterious agricultural miracle been enabled to exist.

Why did Congress pass this law. It was passed pursuant to that mandate in the Constitution, that the inalienable rights of mankind are, life, liberty, and the pursuit of happiness, and Congress was fair. It might well have provided that the farmer could have gone through the wringer and the lien holders only get the market value of his land, $25.00 an acre. But Congress erred on the side of fairness. It said no. We recognize that these joint stock land banks have $500,000,000.00 worth of farm mortgages. We recognize that these insurance companies hold another $2,000,000,000.00 of farm mortgages. We know that they are going to take severe losses on other investments, so we will do what has been done from time immemorial. They soaked the farmer under the guise of saving him. They soaked him. They didn't provide, as they provided subsequently in the case of railroads, or in the case of other individuals, or in the case of corporations, or in the case

of cities, that securities should be scaled down to their market value. No. They said, take the 1909 to 1914 index as a standard, and place on the back of the farmer a burden that he can't possibly carry unless prices advance several hundred percent. Now you would suppose in all conscience, that that would be enough. That Mr. Mutual Benefit Life Insurance Company, or Mr. Lafayette Life Insurance Company, or Mr. John Hancock Life Insurance Company, that had a mortgage on property for $70.00 an acre, and was able to get $60.00 an acre, or where he had $80.00 an acre, he could get $70.00 an acre, would be well satisfied with what Congress had done for them, because $70.00 an acre was two or three times the market value of the land when the law was passed. Fortunately, prices advanced. The land bank's interest was cut down. Where a farmer had a low loan on his land of $50.00 or $60.00 an acre, he got a little relief. Now let us see what happened. Remember this was not a normal period. This wasn't a time when the farmer could go anywhere and get a first mortgage like he could ten years ago. If you held a first mortgage on my farm, and your mortgage was due, and you wanted your money, and you had a mortgage on my land at $100.00 an acre, and it was worth $200.00 an acre, and I could go to any one of ten different places and borrow $100.00 an acre, you had a perfect right to insist that you get your $100.00 an acre. Nobody could criticize you for that attitude. But this was a time of storm and stress in this country. As Congress pointed out, a very severe emergency. Congress made this loan to the farmers as a kindly philanthropic gesture, to carry out the mandate of the Constitution, for my benefit,

and for your benefit. It was not for your benefit exclusively as lien holder, and it was not for my benefit exclusively as a farmer, but it was primarily for my benefit because I was one of the great class that helped build up this country.

Forty percent of our population, directly, or indirectly, are dependent upon agriculture for a livelihood, and our entire country is dependent upon agriculture for its economic prosperity. So this legislation was passed primarily for my benefit, but also to help you.

So the land banks in carrying out the mandate of Congress, attached certain conditions to their loan commitments. One of those commitments would be "pay all debts." When the farmer borrowed this money, he had to pay all debts with it. The creditors had to get together and scale down, and divide this money. But what did the insurance companies do? What did the lien holders do? Immediately they demanded 100 cents on the dollar—the devil with the other creditors. This was money belonging to them! It was to be loaned on the land. No! These new Federal loans were not to be loaned on the land. **They were loaned to the farmer on his farm.** They were loaned to the farmer to pay his debts, and Uncle Sam took from the farmer the only security that he could give in the hope that perhaps some day Mother Nature, plus the ability of the farmer, might make that loan good. It was a two-fold deal. The land plus the farmer. Why there wasn't a loan company on earth that would loan the farmer a dime. There wasn't anybody who would buy his land. Ye, these insurance companies who prate about the Constitution and how it protects them,

had the effrontery to demand that they get their loans 100 cents on the dollar, although they didn't have a loan in their treasury, outside of Government bonds, that was worth 50 cents on the dollar at that time.

In the case of railroads such as the one I instanced, the insurance companies are willing to scale down their lien to only a mere fraction of the appraised value of the railroad, or its reproduction value. But in the case of the farmer, they strenuously object, again and again, to even scale down a fraction of one percent, let alone the maximum reduction in any case that I know of, of 25 percent. And I can safely venture the assertion that the average reduction in all these Frazier-Lemke cases would not exceed 18 percent.

So when the Federal Government has offered to loan money to these farmers that nobody else would loan, isn't the Government justified in starting the farmer out with a clean slate? Is there anything wrong in its demanding that all creditors be paid? Is there anything unreasonable in its asking these insurance companies to scale their mortgages down to the actual value of the mortgage, or to 50 percent above the actual value of the mortgage? I don't think your Honor will think there is. Great corporations are reorganizing. And as Ed Krauthoff pointed out in his great brief in the Radford case bankruptcies aggregate about one billion dollars a year, and are usually netting 10c on the dollar. The creditors of the farmer, the secured creditors, in most cases, get pretty close to 90c on the dollar. Is there anything wrong in the method by which the Federal Government is giving him money which gives the farmer some kind of assurance that perhaps he may pay interest on that

90c on the dollar? But what about the creditors—these insurance companies? The answer is self-evident, they want the land. If inflation comes—if we pull out of the depression—this land may go back, and as there are very few loans on this land over $90.00 an acre, and most loans $70.00 an acre, they will recoup very nicely what they have lost on their other securities.

CONCLUSION

Now our Honor, as Judge Atwell has said, the foregoing discussion illustrates the frame of mind in which the court should approach this great question. Your Honor's decision directly affects the life, liberty, and the pursuit of happiness of a great many people. These farmers have to cope with almost insurmountable obstacles. First, are the vagaries of nature.

They cannot all adopt the attitude of the Georgia cracker who was recently interviewed by an AAA investigator.

He found this gentleman farmer seated at ease on his porch with his trusty corncob in his mouth, and his feet on a soap box, evidently well satisfied with himself and nature. Optimistically the New Dealer said:

"Well George, had a good cotton crop?"
"Nope. Didn't plant nothing. Afraid of the boll-weevil."
"Well, how was the corn?"
"Wa-al, didn't plant none neither. Afraid it wouldn't rain."
"But surely you had a good potato crop?"
"Nope," replied the Cracker. "Didn't plant anythin. Fraid of the bugs."
"But surely," said our friend from Washington, "you had a crop of something."

"Nope," said the Cracker. "I didn't plant nothin. You see Mister, I just played her safe."

Farmers are a trustful and an honest class. They trust their fellowmen. I never realized just to what extent, until the last 18 months that I have been doing business for them and with them. I now understand how farmers can be sold the Brooklyn Bridge and the Masonic Temple. Why they buy gold bricks, because the insurance companies are handing many to them every day.

There is a little obligation, it seems to me, on the strong to protect the weak. And they need protection your Honor, because verily are they babes in the woods, and the wolves are on the edge of the forest.

Now your Honor, this legislation pending before you was passed under a specific authority contained in the Constitution.

As judges have said, bankruptcy means merely the relation of debtor and creditor. Congress under a specific grant of power to affect the relation of debtor and creditor, can do anything it wishes with that relation. The attorney general, and the general counsel of four great executive departments have given their opinion that this law is constitutional. Several district courts of the United States have stated that it was constitutional. The decision of the District Court of Colorado in *in re Cope*, is so clear, so well reasoned, that really nothing can be added to it. I merely ventured to take up the time of the court to talk about some of the broader aspects, not your Honor, so much with relation to the constitutionality of this law, because it is inconceivable that your Honor would hold it, or could hold it, unconstitutional, but to take ad-

vantage of the opportunity to reiterate, and to drive home, some of the principles which must guide the court in deciding many of the questions which must come before it under this law. And there are a great many questions which these avaricious lienholders are going to raise, and which will come before your Honor for decision, and it is very important that you receive complete illumination on both sides of the question.

I thank you.

H. C. LUST

NOTE. Since the foregoing argument was made, the United States Circuit Court of Appeals for the Sixth Circuit has upheld the validity of the Frazier-Lemke Act, in *Louisville Joint Stock Land Bank* v. *Radford*, by a decision filed February 11th, 1935.

The court said inter alia:

> *"The public welfare sought to be conserved by the assailed legislation not only transcends the interest of the class to be affected, but is rooted in the traditional policy of the United States to prevent the development of a great class of dependent tenant farmers comparable to the peasantry of European states. This policy was early reflected in the disposition of the public domain, the homestead laws, and the limitations written into the railroad land grants restricting sales in quantity and price and to actual settlers. Oregon & California R. R. v. U. S.*, 238 *U. S.* 393."

The court continued, discussing the alleged right of the lien holder to bid in the property:

> *"The principal inquiry, however, that suggests itself in relation to the appellant's grievance, and this in respect to all of the specifications of its complaint, must concern itself with consideration*

of what it is in fact deprived through the operation of the challenged law. It is true that the appellant will not be able to collect the face value of its mortgages, nor the accrued interest thereon. But this is a loss it has already sustained, not through the operation of the statute, but through the default, insolvency and bankruptcy of its debtor. But for the bankruptcy, it would still have its right to foreclosure, and to bid in the property. It is by the measure of that right that the reasonableness of § 75 must be judged. The appraisers have declared and the court has found that the fair value of the mortgaged property is $4,445.00. *The fairness of the appraisal is not attacked. That the appellant offered to buy the property from the trustee for an amount equal to the mortgage debt is of course beside the point. Such offer can have no possible bearing upon the fair value of the property. It is this value that forms the base for the price the bankrupt is to pay upon the exercise of his option. True, the mortgagee, upon bidding in the property under foreclosure, has the expectation that by holding the property for a time values may be restored, and it may recoup part or all of its loss. The statute does not take from him this opportunity. It provides for a reappraisal at the end of five years—the option period—upon the mortgagee's request—and the debtor must pay the reappraised price or the original appraised value at the mortgagee's option."*